Canadian Forces Grievance Board
Comité des griefs des Forces canadiennes

AIMING HIGH

CANADIAN FORCES GRIEVANCE BOARD • 2011 ANNUAL REPORT

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CANADIAN FORCES GRIEVANCE BOARD • **2011 ANNUAL REPORT**

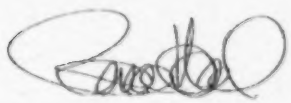
March 31, 2012

The Honourable Peter MacKay
Minister of National Defence
National Defence Headquarters
MGen Georges R. Pearkes Building
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister,

Pursuant to section 29.28(1) of the *National Defence Act*, I hereby submit the 2011 annual report on the activities of the Canadian Forces Grievance Board for tabling in Parliament.

Yours truly,



Bruno Hamel
Chairperson

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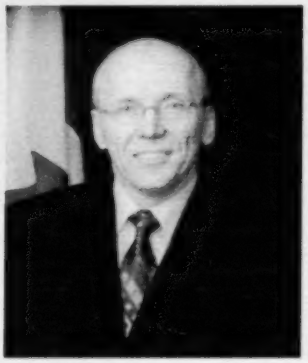
MESSAGE FROM THE CHAIRPERSON



I am pleased to submit the Canadian Forces Grievance Board's Annual Report for 2011.

The Board faced a shifting environment in 2011, primarily because of government wide efforts to control spending and reduce the deficit and the implementation, on a trial basis, of a new approach for the referral of grievances to the Board.

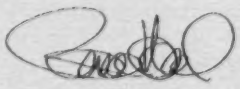
We have positioned ourselves to respond to these challenges by consolidating business processes and realigning our resources.

I am extremely satisfied with the preliminary results of the "*principled approach*" trial which began in January 2011. As you will see later in the pages of this report, these results clearly demonstrate that the Board has the capacity and expertise to provide an independent and timely review of all types of grievances. Although I was disappointed by the decision of the Canadian Forces (CF) to put the trial on hold in October, it is reassuring to know that the Armed Forces Council also indicated that the trial would recommence in 2012. I look forward to the resumption and ultimate adoption of the "*principled approach*" model, so that the benefits of an external review are available to all CF members whose grievances reach the Final Authority (FA) level, as well as to the Chief of the Defence Staff (CDS).

I am also gratified to see that both the significance of the Board's role in the grievance process and the quality of our work were highlighted in a series of Federal Court decisions released in 2011. These decisions, outlined in some detail in this report, affirmed the obligation of the CDS, as the FA, to specifically address the Board's findings and recommendations (F&R) when issuing his or her reasons for a decision. There was, as well, an important finding by the Federal Court that, when the CDS agrees with the Board's F&R, he/she need only signify concurrence without further reasons. This potentially may result in the significant saving of time and resources for the CDS.

The Board responded to the Government of Canada's Budget 2011 cost containment measures. The Budget required all departments to conduct a strategic and operational review with the aim of contributing to the reduction of the federal deficit. We began a process to revise business processes and invest in technology to realize savings. Notwithstanding reduced resources, our productivity continues to improve and the quality of our work remains undiminished.

The Board has ended 2011 well positioned to face the challenges that we will be confronted with in 2012. In these times of uncertainty arising from a transformed work environment and reduced financial resources, we will continue to focus on our primary mission, contribute to positive change and position our organization for success. For this, I rely on the extraordinarily dedicated and talented staff and members of the Board whose enthusiasm and professionalism have served the organization so well in the past and will continue, I am certain, to characterize our work for many years to come.



Bruno Hamel
Chairperson

THE CANADIAN FORCES GRIEVANCE BOARD

THE GRIEVANCE CONTEXT

Section 29 of the *National Defence Act* (NDA) provides a statutory right for an officer or a non-commissioned member who has been aggrieved, to grieve a decision, an act or an omission in the administration of the affairs of the Canadian Forces (CF). The importance of this broad right cannot be overstated since it is, with certain narrow exceptions, the only formal complaint process available to CF members.

Since it began operations, in 2000, the Canadian Forces Grievance Board (CFGB) has acted as the external and independent component of the CF grievance process.

The Board reviews all military grievances referred to it by the Chief of the Defence Staff (CDS), as stipulated in the NDA and article 7.12 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&Os). Following its review, the Board submits its findings and recommendations (F&R) to the CDS, at the same time forwarding a copy to the grievor; the CDS is the final decision-maker. The CDS is not bound by the Board's report, but must provide reasons, in writing, in any case where the Board's F&R are not accepted. The Board also has the obligation to deal with all matters as informally and expeditiously as the circumstances and the considerations of fairness permit.

The types of grievances that must be referred to the Board are those involving administrative actions resulting in deductions from pay and allowances, reversion to a lower rank or release from the CF; application or interpretation of certain CF policies, including those relating to conflict of interest, harassment or racist conduct; pay, allowances and other financial benefits; and entitlement to medical care or dental treatment.

The CDS must also refer to the Board grievances concerning a decision or an act of the CDS in respect of a particular officer or non-commissioned member. Furthermore, the CDS has discretion to refer any other grievance to the Board.

Mission

The Canadian Forces Grievance Board provides an independent and external review of military grievances. In doing so, the Board strengthens confidence in, and adds to the fairness of, the Canadian Forces grievance process.

Mandate

The Canadian Forces Grievance Board is an independent administrative tribunal reporting to Parliament through the Minister of National Defence.

The Canadian Forces Grievance Board reviews military grievances referred to it pursuant to section 29 of the *National Defence Act* and provides findings and recommendations to the Chief of the Defence Staff and the member who submitted the grievance.

BOARD STRUCTURE

The Board consists of Governor in Council (GIC) appointees who, alone or in panel, are responsible for reviewing grievances and issuing F&R.

Under the NDA, the GIC must appoint a full-time Chair, at least one full-time Vice-Chair, and one part-time Vice-Chair. In addition, the GIC may appoint any other full or part-time members the Board may require to carry out its functions. Appointments may be for up to four years and may be renewed.

Grievance officers, team leaders and legal counsel work directly with Board members to provide analyses and legal opinions on a wide range of issues. The responsibilities of the Board's internal services include administrative services, strategic planning, performance evaluation and reporting, human resources, finance, information management and information technology, and communications.

THE GRIEVANCE PROCESS

The CF grievance process consists of two levels and begins with the grievor's Commanding Officer (CO).

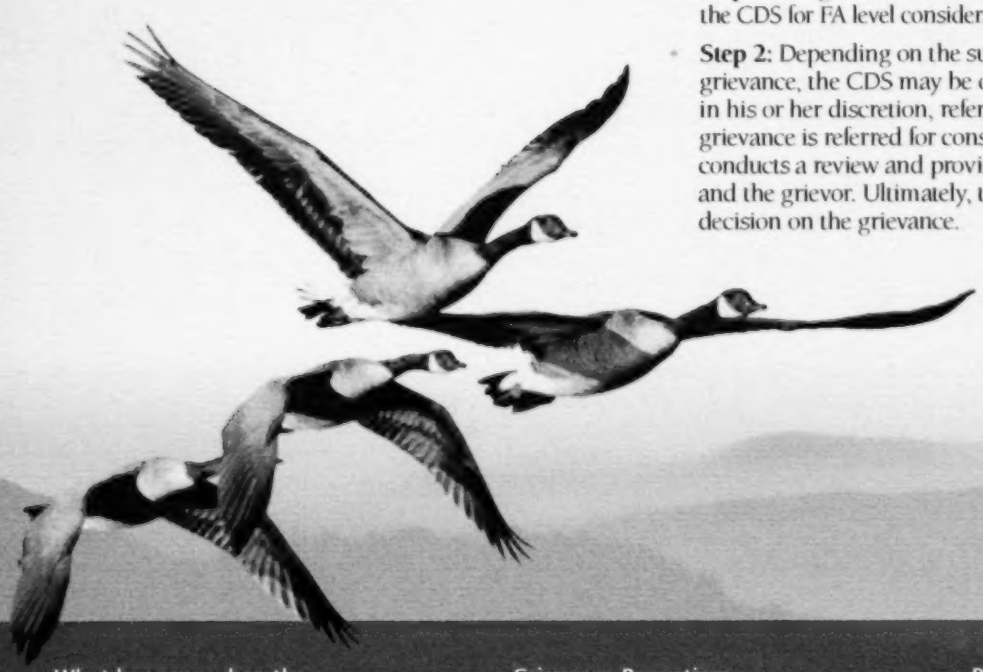
Level I: Review by the Initial Authority (IA)

- **Step 1:** The grievor submits a grievance in writing to his or her CO.
- **Step 2:** The CO acts as the IA if he or she can grant the redress sought. If not, the CO forwards the grievance to the senior officer responsible for dealing with the subject matter. Should the grievance relate to an action or decision of an officer who would otherwise be the IA, the grievance is forwarded directly to the next superior officer who is able to act as IA.
- **Step 3:** The IA renders a decision, and if the grievor is satisfied, the grievance process ends.

Level II: Review by the Final Authority (FA)

Grievors who are dissatisfied with the IA's decision are entitled to have their grievance reviewed by the FA, which is the CDS or his/her delegate.

- **Step 1:** The grievor submits his or her grievance to the CDS for FA level consideration and determination.
- **Step 2:** Depending on the subject matter of the grievance, the CDS may be obligated to, or may, in his or her discretion, refer it to the Board. If the grievance is referred for consideration, the Board conducts a review and provides its F&R to the CDS and the grievor. Ultimately, the FA makes the final decision on the grievance.



What happens when the Board receives a grievance file?

The Board's internal grievance review process consists of three steps: grievance reception, Board review, and the preparation and submission of findings and recommendations (F&R).

1

Grievance Reception:

Upon receipt of a grievance, the Board acknowledges receipt of the file to the grievor disclosing the information contained in his/her file and inviting the grievor to submit additional comments or other documents relevant to his/her case.

2

Board Review:

An assigned Board member reviews the grievance and identifies the issues. If necessary, additional documentation is obtained and added to the file and subsequently disclosed to the grievor. The Board member is assisted by a team leader, a grievance officer and legal counsel.

THE YEAR IN REVIEW

In 2011, the Canadian Forces Grievance Board faced challenges arising from two major factors: the government wide efforts to restrict growth in spending and reduce the deficit; and the implementation, on a trial basis, of a new approach to grievance referral to the Board aimed at improving the fairness and transparency of the CF grievance process.

In response to these challenges, the Board reviewed and consolidated its business processes, realigned its resources to adapt to the grievance referral trial and initiated or took part in several internal and external initiatives aimed at contributing to the improvement of the grievance process. All the while, the Board remained focused on its priorities of ensuring maximum operational efficiency, reducing costs and maintaining exemplary management practices.

The Board closed 2011 with many positive and permanent accomplishments, and with the resolve to continue achieving the best possible results in operations and internal services.

SUPPORTING IMPROVEMENTS TO THE GRIEVANCE PROCESS

"Principled Approach" *Pilot Project*

In January 2011, the Board commenced a six month trial of a new approach for the referral of grievances, which had been approved by the Armed Forces Council, the senior executive body of the CF. Under this "*principled approach*," the CF would refer to the Board all unresolved grievances that reach the FA level. Currently, the Board's review is limited to only four types of grievances, which represent approximately 40% of the total number of grievances that reach the FA level.

An additional 53 files were referred to the Board under this new approach and the results were extremely encouraging: in 54% of the 50 cases received and completed in 2011, the Board's F&R differed from that set out in the CF position. By examining these cases, which belong to types of grievances usually excluded from the Board's review, the CFGB provided both the grievors and the FA with the benefits of an external opinion. These positive results, further detailed in the Operational Statistics chapter, validate the value-added of the Board's role as an independent review body.

"It is difficult for the Board to explain to grievors why a grievance regarding relocation benefits must be reviewed by the Board, but a decision to remove an officer from command, which could have long-term career implications, does not."

The CFGB in a meeting with the Honourable Justice Patrick LeSage who conducted the Second Independent Review of the provisions of Bill C-25 – August 2, 2011

Regrettably, the CF suspended the pilot project in October with the intention of resuming the trial in 2012. The Board remains committed to the "*principled approach*" and is ready for a full-scale implementation of this new model which has proved to be beneficial to all parties involved. The Board is hopeful that the CF will permanently adopt the "*principled approach*" or any similar model which allows for all CF members whose grievances reach the FA level to have equal access to an independent review of their cases.

3

Findings and Recommendations: The Board member issues the final F&R which are then sent simultaneously to both the Chief of the Defence Staff (CDS) and the grievor.

At this point, the Board no longer retains jurisdiction over the grievance, although the Board tracks its ultimate outcome. The grievor receives a decision directly from the Final Authority (FA) in the grievance process, the CDS or his/her delegate.

The FA is not bound by the Board's F&R. However, in cases where the FA disagrees, reasons must be provided in writing to both the Board and the grievor.

The Second Independent Review of Bill C-25[1]

In 2011, the Minister of National Defence appointed the Honourable Patrick LeSage, a retired Chief Justice of the Ontario Superior Court of Justice, to conduct the Second Independent Review of Bill C-25 which included provisions related to the military grievance process and the Board. The CFGB participated in this review and submitted several recommendations to improve certain aspects of the grievance process. The Board particularly noted that restricting its review to certain types of grievances, as per the current regulations, "may be impacting negatively on the perceived fairness of the grievance process."

The Board also offered several suggestions intended to facilitate its work and enhance its efficiency, as outlined on pages 52 and 53. The Board is hopeful that the LeSage Report, which was submitted to the Minister of National Defence at the end of 2011, will lead to improvements in the timeliness, efficiency and fairness of the grievance process.

National Defence Act *Amendments*

The CFGB voiced its support of several suggested improvements to the grievance process in parliamentary hearings on Bill C-41[2], which included provisions related to the military grievance process, the Board's role, and a name change for the CFGB. In February 2011, the Chairperson of the Board testified before the Standing Committee on National Defence studying Bill C-41 and renewed the Board's support of all recommendations made by the late Chief Justice Antonio Lamer[3], particularly those aimed at improving the timeliness of the grievance process. In this regard, the Chairperson noted the CFGB's success in drastically reducing the time required to review grievances at the Board, thus contributing its part to the overall efficiency of the grievance process. Bill C-41 later died on the Order Paper, because of the federal election. It was succeeded by Bill C-15 which was tabled in October 2011.

1 The Minister of National Defence is required to arrange every five years for an independent review of the provisions and operation of Bill C-25, *an Act to Amend the National Defence Act and to make consequential amendments to other Acts*. A first independent review was conducted in 2003 by the late Chief Justice Antonio Lamer.

2 Bill C-41: *Strengthening Military Justice in the Defence of Canada Act: An Act to Amend the National Defence Act and to make consequential amendments to other Acts*.

3 The Late Chief Justice Antonio Lamer conducted the First Independent Review of Bill C-25 and made many recommendations, including 18 aimed at improving the grievance process. Several of these recommendations have been implemented since; others are contained in Bill C-15, the successor of Bill C-41. Three recommendations, specifically related to the Board, are still outstanding.

> *"The name change will lead to a better understanding of the specific and unique role for which the Board was created. It will also underline its institutional independence while clarifying its mandate."*
>
> The Chairperson, Bruno Hamel, expressing support to the Board's name change before the Standing Committee on National Defence on February 9, 2011. The name change to "Military Grievances External Review Committee" is included in Bill C-15.

The CFGB continues to seek the implementation of three outstanding recommendations from the Lamer report, of particular interest to the Board, which were neither included in Bill C-41, nor in its successor Bill C-15. These three recommendations would allow Board members to complete their caseload after the expiration of their term; provide the Board with a subpoena power; and establish that the Board's annual report be based on the fiscal year rather than the calendar year. Implementing these recommendations would enhance the Board's efficiency.

ADVANCING THE BOARD'S STRATEGIC PRIORITIES

Sustained Operational Efficiency

In 2011, for the third year in a row, the Board succeeded in further reducing the average time required for the review of grievances. This outcome was achieved even though the Board received more files and dealt with new types of grievances referred for its review as a result of the "*principled approach*." Over the course of the last three years, the average time for the review of a grievance at the Board dropped from 9.6 months to 2.6 months, as of December 31, 2011. This represents an improvement of 73% over the Board's productivity average of 2008. It is also an improvement of 55% over the Board's current productivity standard of an average of six months.

Another significant achievement occurred in March 2011, when the Board did not have in its inventory any active grievances referred to it before 2011 (except for one complex case which was completed in August). This represents an improvement of seven months over 2010 during which the Board completed the review of all grievances referred to it before 2010 by the end of October.

The CFGB's sustained efficiency improvements over the last five years are the result of the Board's regular assessment of, and subsequent adjustments to, its internal review process. A knowledgeable and

relatively stable workforce has also proven to be an asset for operational efficiency. These results, as well as others related to the Board's operations, are described in more detail in the Operational Statistics section.

In 2012, the Board plans to review its current productivity standard of an average of six months to reflect its increased efficiency.

Communications Activities

The Board's second strategic operational priority is to communicate its role and the results of its work, as well as sharing with stakeholders the CFGB's perspective on issues that come to its attention while reviewing grievances. The Board's key communications activities in 2011 included the following:

- New case summaries and recommendations on systemic issues were posted on the CFGB's Web site (www.cfgb-cgfc.gc.ca). Summaries of the last three years provide the reader with a wealth of information on the Board's interpretation of policies and regulations, as well as on grievance issues. Recommendations on systemic issues provide information on issues affecting not only the grievor, but other CF members and for which leadership intervention may be required. In both cases, the Board also posts the decisions of the FA;
- Two editions of *Perspectives*, a newsletter primarily directed to CF senior officers at DND Headquarters, were published in May and in November. Through *Perspectives*, the Board shares with CF decision-makers valuable information about grievance trends and areas of dissatisfaction that come to its attention during the review of individual grievances. *Perspectives* is also available on the Board's Web site;
- Four editions of the electronic bulletin available exclusively through the Board's Web site were also published. The *eBulletin* highlights current and interesting cases recently reviewed by the Board;
- The statistics page added to the Web site in 2010 was regularly updated to provide a global overview, in graphics and numbers, of the Board's F&R for cases reviewed over the past five years, as well as CDS decisions on these cases; and
- The Board visited two CF bases (Gagetown and Esquimalt) as part of its communications strategy aimed at maintaining direct communication with members of the CF in their work environment.

At the same time, the Board implemented several initiatives aimed at obtaining feedback from its various audiences, in order to ensure the effectiveness of its communications. A survey developed for base personnel attending the Board's presentations during base visits has already yielded positive results and led to some adjustments in these presentations. A new feedback tab was also added on the Web site to collect comments from users, particularly from readers of the Board's publications posted online. This feedback will be used to ensure the Board's products and messages remain relevant and consistent with its communications objectives.

> *"The information contained in Perspectives is valuable to senior leadership and provides important feedback on issues and concerns that need attention ... Your newsletter highlights the inconsistencies that may occur ... and the presentation of trends of grievances is valuable in helping keep military personnel management responsive and effective."*
>
> Chief Military Personnel, Rear-Admiral A. Smith, in a letter to the Board's Chairperson – 27 March 2011

RESPONDING TO GOVERNMENT PRIORITIES

Measures Affecting CFGB's Operating Budget

Budget 2011 continued to build upon measures taken in Budget 2010 to return the Government of Canada (GOC) to a balanced budget. The launch of the one-year Strategic and Operating Review (SOR) moved the GOC towards balanced budgets while continuing to pay down debt and investing in the priorities of Canadians. All federal departments and agencies participated in the SOR to improve the efficiency and effectiveness of government operations and programs and to ensure value for taxpayer money.

The CFGB reviewed its operations and identified specific proposals under the SOR. The Board put in place measures to improve efficiency and realize savings through business consolidation, transforming business processes and investing in technology.

Strategic Investment

The Board successfully implemented several Information Management/Information Technology (IM/IT) projects this past year which resulted in improved alignment with federal government IM/IT standards and guidelines. One key initiative was the virtualization of the Board's server infrastructure, which is the foundation for the development of a more efficient IT infrastructure and sets the stage for desktop virtualization and future opportunities for efficiencies and savings. The Board is now very well positioned for potential future shared services offerings, such as GCDocs and Cloud computing.

The Board also put in place a more effective way of managing information by rolling out a new desktop operating system and business software suite and by migrating the corporate network drive into the Board's electronic records management system. This resulted in full Record Keeping compliance by managing all of the Board's information and better meeting the Board's internal business needs.

Stewardship of Resources

For the past few years, the Board has implemented a series of policies and processes aimed at enhancing financial governance and internal controls to ensure the integrity of its financial information. In 2011, the Board continued to ensure good stewardship and effective management of financial resources by embarking in a full scale review of its internal control processes in key areas, including financial management reporting and assets management. Measures are already in place to conduct testing of documented controls of key business processes, with the aim of validating the integrity of these processes and to ensure they are consistent with established accounting standards and policies and compliant with legislation and regulations.

As the final component of the Board's work on IT security, an action plan in response to recommendations made in the Threat and Risk Assessment (TRA) was completed and most of these recommendations were implemented, with remaining items scheduled for completion in 2012.

As well, in 2011 the CFGB undertook an exercise aimed at ensuring its Web site is compliant with the internationally recognized Web Content Accessibility Guidelines required by Treasury Board under the updated Common Look and Feel 2.0 for the Internet standard, or CLF 2.0. This was an opportunity for the Board to rejuvenate its Web site, taking into consideration the GOC's Open Government strategy and the importance of receiving user feedback. The Board also eliminated redundancy on the Web site and archived older documents which are not frequently accessed. Finally, new features were added including an advanced Search function. A self-assessment conducted by the Board at the end of the project in December showed complete compliance with the Web Accessibility standards.

LEADING THE WAY IN RECORD KEEPING

The Canadian Forces Grievance Board is one of the first federal entities to fully identify and migrate all corporate records to the Records, Documents and Information Management System (RDIMS), with accurate retention and disposal schedules. As such the Board acts as a model for other government organizations similarly obligated to comply with Treasury Board's Record Keeping Directive.

In November 2011, the Board's project to migrate records from corporate shared drives to RDIMS attracted a lot of attention during a conference organized by the Association of Records Managers and Administrators.

It is expected that the Board will reach full compliance with Treasury Board's Record Keeping Directive two years ahead of schedule.

OPERATIONAL STATISTICS

Operational performance is a priority for the Board. It represents its ongoing contribution to the fairness and efficiency of the military grievance process and ensures the high quality and the timeliness of its F&R. The Board regularly assesses its internal review processes and closely monitors its production timelines, workload and planning assumptions to maintain optimum productivity and the quality of its services. This rigorous exercise allows the Board to remain agile and to quickly respond to changes in the environment.

A Timely Review

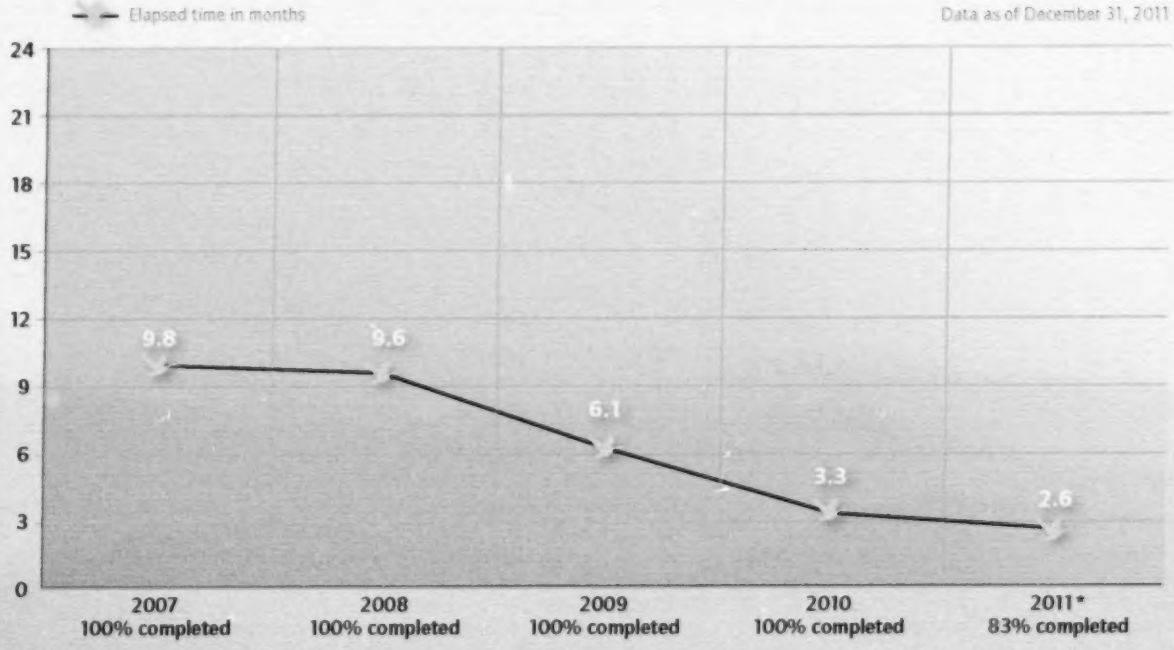
In 2011, the Board further increased its productivity bringing the average time to complete the review of grievances to 2.6 months per file, for cases received and completed in 2011. This represents a 73% improvement over the Board's productivity average of 2008, when significant changes to the internal review processes were introduced. It also represents a 21.7% improvement over last year's average of 3.3 months and a 55% improvement over the Board's productivity standard of an average of six months.

Figure 1 shows the elapsed time taken on cases completed over the last five years.

"I was very impressed by the thoroughness of your research work, your analytical mind, your capacity to summarize long and complex matters and the quality of your writing. You have added some points I was not even aware of and conducted an objective analysis taking into consideration some aspects (of the file) I did not even discern."

A grievor whose case was reviewed by the Board in an email sent to the grievance analyst who was assigned the file.

FIGURE 1



NOTE*: Not all cases received in 2011 have been completed to date.
These statistics will be adjusted in future reports to include the balance of the cases received in 2011.

An Independent Review

As an administrative tribunal, the Board has the obligation to review every case fairly and impartially. Each file is reviewed carefully and on its own merits while taking into consideration the issues raised in the complaint, the relevant evidence and the submissions of both the grievor and the CF authorities.

Between 2007 and 2011, the Board issued F&R on 583 grievances of which 45.6% (266 cases) had recommendations to grant or partially grant the grievance (i.e., supported the position of the grievor). In the remaining 53.7% (313 cases), the Board recommended to deny the grievance.

Figure 2 sets out the distribution in percentage of the Board's recommendations by year (583 F&R between 2007 and 2011, as of December 31, 2011).

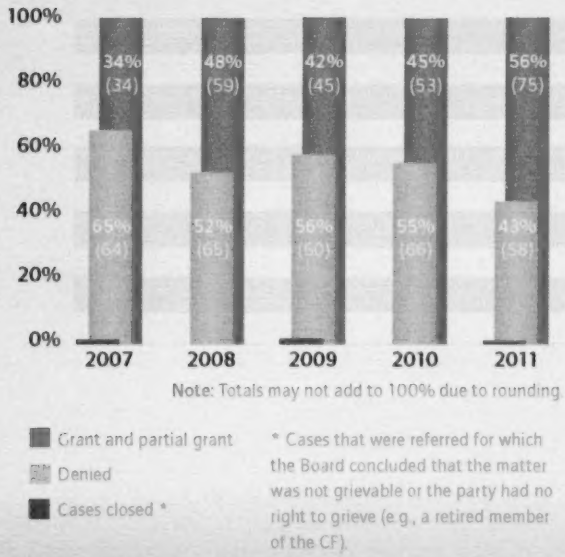
Key Results

In the last five years, the CDS issued decisions on 475 cases out of 583 reviewed by the Board. A total of 199 of these decisions addressed cases where the Board recommended that redress be granted or partially granted. The remaining 276 decisions addressed cases where the Board recommended that redress be denied.

In the 199 grievances where the Board recommended redress be granted or partially granted, the CDS agreed or partially agreed in 84% of the cases (168 files). For the remaining 276 grievances for which the Board recommended that redress be denied, the CDS agreed in 87% of the cases (241 files).

Figure 3 illustrates the distribution of the CDS decisions, in percentage, on each of these two categories, as of December 31, 2011.

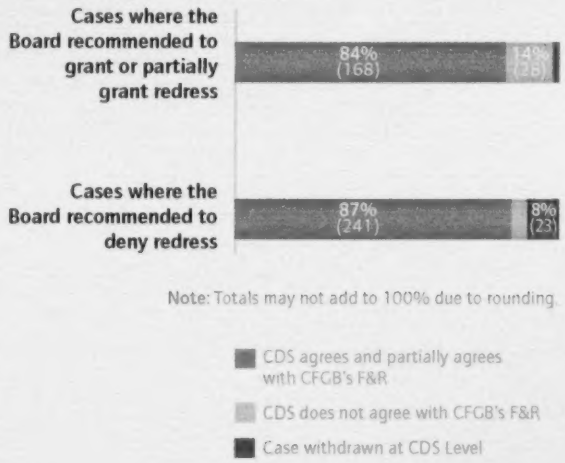
FIGURE 2



Note: Totals may not add to 100% due to rounding.

* Cases that were referred for which the Board concluded that the matter was not grievable or the party had no right to grieve (e.g., a retired member of the CF).

FIGURE 3


Cases where the Board recommended to grant or partially grant redress
84% (168)
14% (28)
Cases where the Board recommended to deny redress
87% (241)
8% (23)
CDS agrees and partially agrees with CFGB's F&R
CDS does not agree with CFGB's F&R
Case withdrawn at CDS Level

Note: Totals may not add to 100% due to rounding.

Annual Workload

The number of cases referred to the Board increased as a result of the "*principled approach*" trial. In 2011, the Board received 139 files and issued 134 F&R. By the end of December, only 22 files received in 2011 were left in the Board's inventory.

Completed Grievance Reviews

The following table outlines the distribution by recommended outcomes of the 134 cases completed by the Board in 2011.

TABLE 1

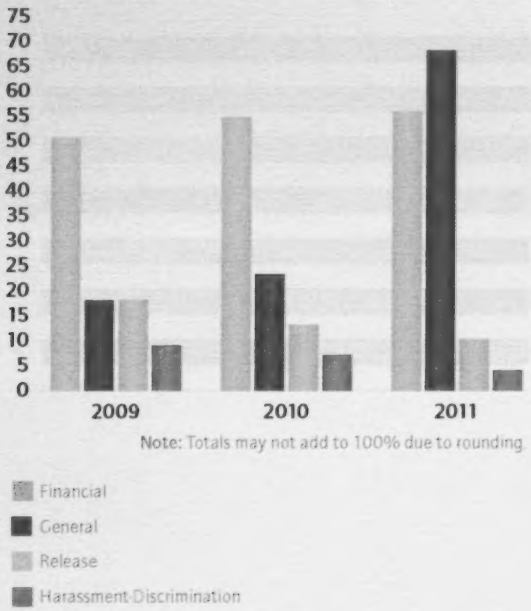
Grievance Categories	Deny	Partially Grant	Grant	No Standing*	Total
Financial	24	10	19	0	53
General	27	20	16	1	64
Harassment-Discrimination	2	3	1	0	6
Release	5	3	3	0	11
Total	**58**	**36**	**39**	**1**	**134**

*The party does not have the right to make a legal claim or seek judicial enforcement of a duty or right.

Categories of Grievances Received

Figure 4 shows the breakdown, by category, of the grievances received at the Board in the last three years (financial, general, harassment/discrimination and release). In 2011, grievances referred under the "*principled approach*" were classified under the general category; this accounts for the significant increase in this category compared to previous years.

FIGURE 4

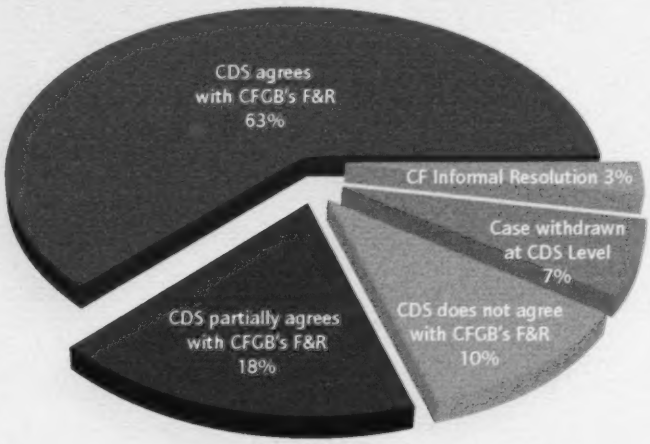


Note: Totals may not add to 100% due to rounding.

CDS Decisions

In 2011, the Board received CDS decisions in response to 123 grievances. As shown in figure 5, in 80% of these cases the CDS agreed or partially agreed with the Board's F&R. He disagreed with the Board in 10% of these cases. The remaining cases were either resolved or withdrawn by the grievors, after the issuance of the Board's F&R.

FIGURE 5


CDS agrees with CFGB's F&R 63%
CF Informal Resolution 3%
Case withdrawn at CDS Level 7%
CDS does not agree with CFGB's F&R 10%
CDS partially agrees with CFGB's F&R 18%

Note: Totals may not add to 100% due to rounding.

"Principled Approach" Initial Results

Beginning in January 2011, the Board participated in the trial of the "*principled approach*," a new model for grievance referral under which all grievances reaching the FA level and which were not fully granted by the CF (i.e., denied or partially granted) would be sent to the Board for review. A total of 53 cases were received by the Board under this model and the Board had completed the review of 50 of these cases by 31 December 2011.

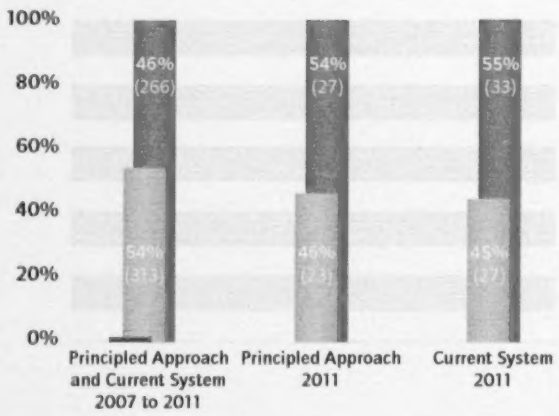
In 54% of the completed files, the Board recommended to grant or partially grant the grievance. In other words, in 27 cases, the Board did not fully agree with the CF position. The CFGB's independent review of those cases provided the grievors and the FA with the benefit of an external opinion. Although the FA decision has not been rendered in most of these cases, the CDS has so far agreed or partially agreed with the Board's F&R in five out of the six decisions he has rendered to date in the "*principled approach*" files.

In the other 23 cases, the Board's review validated the CF interpretation of policy/regulation related to the specific matters being grieved.

Another positive result was that the files referred to the Board's review under the "*principled approach*" were completed within timelines similar to those reviewed under the current system.

Figure 6 sets out a comparison between the cases reviewed in the last five years, the cases reviewed in 2011 under the "*principled approach*" model and the cases reviewed in 2011 under the current model. As shown in this figure, the Board historically did not fully agree with the CF position in 46% of the cases reviewed since 2007. Although the 50 cases completed in 2011 under the "*principled approach*" represent a relatively small sample, it is worth noting that a similar trend is emerging with the new model, as the Board departed from the CF position in 54% of these cases, irrespective of the type of grievance reviewed.

FIGURE 6



Note: Totals may not add to 100% due to rounding.

* Cases that were referred for which the Board concluded that the matter was not grievable or the party had no right to grieve (e.g., a retired member of the Canadian Forces).

SELECTED CASE SUMMARIES

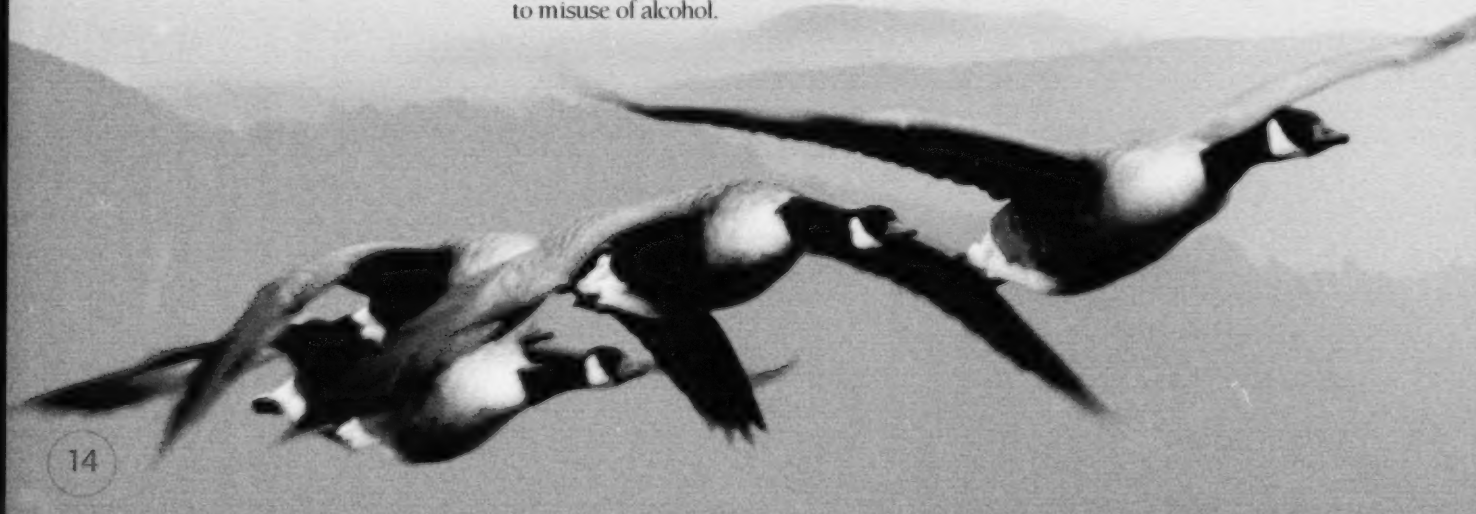
REMEDIAL MEASURES

Following a mess dinner where he had been seen consuming alcohol, the grievor was involved in a car accident and was subsequently charged with impaired driving. The following day, the grievor apparently expressed regret for his actions to his Commanding Officer (CO) and Deputy Commanding Officer (DCO). According to his DCO, the grievor also stated that he had no recollection of driving the vehicle. Based on the fact that the grievor had been charged with impaired driving, the CO placed him on counselling and probation (C&P) for "misuse of alcohol." The grievor did not contest the C&P.

One year later when the grievor's case was heard in civilian court, he was acquitted of all charges. Based on new information that came to light during the trial, the grievor submitted his grievance suggesting that he had been improperly placed on C&P based on false assumptions and inaccurate information. He claimed that he had absolutely no recollection of the night in question (due to a concussion he suffered in the accident), and had only assumed that he had been driving intoxicated based upon the police report of the incident and what others had told him. With the new information presented, he argued there was no evidence that he was driving while impaired, and there was doubt that he was driving at all on the night in question. He also contended that the decision to place him on C&P for the incident, rather than a lesser administrative measure, was unduly harsh given his impeccable 18-year service record.

The grievor requested that the C&P be rescinded, that his annual personnel evaluation report be amended to remove all reference to the C&P and that a supplemental selection board be conducted based on the new information.

The Initial Authority (IA) denied the grievance, stating that the grievor's acquittal did not invalidate the decision to place him on C&P. He found that whether the grievor was the driver or a passenger during the car accident was ultimately caused by a serious error in judgment on the grievor's part, made after consuming alcohol, and therefore amounted to misuse of alcohol.



Board's Findings and Recommendations

The Board felt that the CO appeared to have assumed that because the grievor was charged, a conclusion could be drawn about the amount of alcohol consumed, resulting in measures taken on the presumption of misuse of alcohol. The Board also agreed with the grievor that C&P seemed unduly harsh in this case, given that the CF policy suggests a progressive series of measures to be taken in cases of misuse of alcohol; these steps were not taken in the grievor's case.

The Board found that the decision to place the grievor on C&P for misuse of alcohol was unjustified and unreasonable given the circumstances of the case. The Board had also serious concerns with several of the findings of the IA.

The Board recommended that the grievance be upheld.

Chief of the Defence Staff Decision

Pending.

EDUCATION ALLOWANCE FOR RESERVISTS

The grievor, a member of the Regular Force (Reg F), was a Reservist at the time she submitted a grievance contending that she was unfairly excluded from applying for the Canadian Forces Personnel Assistance Fund (CFPAF). The grievor explained that one of the reasons why she transferred to the Reg F was so that she could be eligible to apply for the Education Allowance Loan Program (EALP). She argued that the CFPAF policy was discriminatory against Reservists as they were not eligible to apply for the EALP. She further submitted that the current CFPAF policy was neither consistent with the intent of s.39 of the *National Defence Act* (NDA), nor with the Total Force Concept of today's CF and that, regardless of the fact that she was a Reg F member, she had been aggrieved as a Reservist. As remedy, the grievor requested a review of the eligibility criteria governing the CFPAF EALP with the intent of allowing all Reservists to apply.

The Initial Authority (IA), the Chief of Military Personnel, rejected the grievance and informed the grievor that since she was a member of the Reg F, she was eligibile for the CFPAF program and therefore her complaint was not a grievable matter. The IA also informed the grievor that a feasibility study would be undertaken to review proposals to extend the program to all Reservists.

Board's Findings and Recommendations

As for the right to grieve, the Board observed that at an early stage in the handling of the grievance, the President of the Service Income Security Insurance Plan (SISIP) Financial Services informed the grievor that the issue grieved was not one that could be addressed under the grievance process. The Board noted that this statement was incorrect. The policy can be grieved in situations where a member is directly and personally affected by a policy adopted by the CF (or one of its emanations).

The Board also noted that a policy could not be grieved in the abstract and a member not personally affected did not have standing to grieve. The Board found that when the grievor was a member of the Reserve Force (Res F), she was directly and personally affected by the CFPAF rule regarding the eligibility of reservists for the EALP. Since the grievor was aggrieved, she was entitled under s.29 of the NDA to bring forward a complaint in the form of an application for redress. The Board found that the issue grieved was valid at the time the original grievance was filed.

On the merits of the issue raised by the grievor, the Board noted that the grievor, as a Reg F member, was eligible to apply for the EALP. In view of changes in the underlying fact situation, the Board concluded that the issues presented in the grievance were moot. The Board found that the issue being grieved was no longer valid and there were no grounds upon which to recommend that the CDS exercise discretion to consider the grievance. The Board recommended that the CDS reject the grievance without deciding on the merits of any issues raised and that the grievance file be closed.

On the role of Reservists, the Board observed that regardless of the status of the Res F in 1969 when the CFPAF policy was adopted, there could be no doubt that in 2011 members of the Res F play a critical everyday role in the operations and support arms of the CF. Reservists are fighting and dying abroad, and filling key positions at every CF level in Canada. They routinely patronize Reg F messes and are, no doubt, welcome patrons at the Canadian Forces Exchange System, meaning that they contribute to the coffers of the CFPAF as do their Reg F comrades. In the Board's opinion, it would appear that the policy in question has so far ignored these realities, leaving Reservists very much in the status of "second-class citizens." The Board was pleased to hear that a feasibility study would be undertaken, with the view of offering CFPAF programs or their equivalent to all Reservists.

Chief of the Defence Staff Decision

The CDS agreed with the Board's findings and its recommendation to deny the grievance.

TRANSITIONAL POST LIVING DIFFERENTIAL

The grievor complained that the procedure set out by *Compensation and Benefits Instructions* (CBI) 205.452 – *Transitional Post Living Differential* (TPLD) – whereby TPLD benefits for the National Capital Region (NCR) were to be reduced to zero had not been complied with. This created a situation where he and other CF members who transferred to the NCR after 1 April 2008 received no TPLD, while other members remained entitled. He therefore requested that he receive the TPLD from the date of his posting to Ottawa. The grievor also requested proof that Treasury Board (TB) had approved the freeze of TPLD rates.

The Director General Compensation and Benefits (DGCB), acting as the Initial Authority (IA), returned the grievance without rendering a decision on its merit, pointing out that the Department of National Defence had no authority to amend a policy approved by TB.

Board's Findings and Recommendations

The Board noted that it had examined cases in the past where it had concluded that the DGCB's interpretation of paragraph 7.01(1) of the *Queen's Regulations and Orders* (QR&Os) – *Right to Grieve* – was incorrect. In any case, the Board emphasized that TB directives are not Governor in Council regulations as stipulated in QR&O 7.01(1) and, as a consequence, CF members are not prohibited from grieving policies approved by TB. The Board concluded that the IA should have considered the merits of the grievance.

The Board also concluded that the freeze on TPLD rates had been authorized by TB and that, pursuant to the policies in effect, the grievor was not entitled to TPLD. However, the Board observed that, although the freeze was reflected in the table appended to CBI 205.452, it was not properly reflected in the wording of the CBI itself. The Board found that the result of this disparity was that CBI 205.452 and its table appeared to contradict each other.

The Board recommended that the CDS deny the grievance and direct a policy review in order to either implement the transitional methodology to further reduce TPLD benefits, or return to the practice of granting this allowance as it was before the TPLD methodology was introduced.

Chief of the Defence Staff Decision

The CDS agreed with the Board that the grievance be denied.

The CDS agreed with the Board's recommendation on the application of the provisions dealing with the TPLD and has ordered the Chief Military Personnel to liaise with DGCB and TB and quickly bring into line the situations of all posted members, thereby eliminating the sense of injustice caused by the imposition of a freeze in TPLD rates.

SEPARATION EXPENSE

The grievor received Separation Expense (SE) benefits while on Imposed Restriction (IR). It was later determined that he had no entitlement and had been overpaid. The grievor attested to his due diligence in providing all the necessary information regarding his family situation to his superiors. He indicated that he relied on Subject Matter Experts and the approving authority that authorized his IR status.

The grievor maintained that his parents qualified as dependants because they were "normally" resident with him. He pointed out that his parents did not cease to be his dependants simply because they remained in his residence at his old place of duty, during his posting to a new place of duty.

Paragraph 209.997(2) of the *Compensation and Benefits Instructions* (CBI) provides the entitlement to SE. It stipulates that a CF member is entitled to SE as compensation for additional expenses as a result of the separation from his/her dependants when he/she is posted to a new place of duty. One of the conditions is that the member must have a dependant as defined in paragraph (3) of CBI 209.80, who is normally resident with him/her at his/her place of duty.

Article 209.80 of the CBI provides, in part, that a dependant is a relative by blood, marriage or common-law partnership or adoption, legally or in fact, who is normally resident with the member and for whom the member may claim a personal exemption under the *Income Tax Act* or, a family member who is permanently residing with the member, but who is precluded from qualifying as a dependant under the *Income Tax Act* because the family member receives a pension.

CANFORGEN 019/05, which was cancelled in February 2011, also mentioned a number of factors that were to be considered in approving IR. It specified that when it was determined that a move was not in the best interest of the family, a member could be authorized to proceed to his new place of duty unaccompanied.

Board's Findings and Recommendations

The grievor explained to the Board why it was in his parents' best interest to remain at his home at his old place of duty. The grievor also provided an affidavit setting out that he has been advised by the tax authorities that he is eligible to claim a personal exemption, the Caregiver Amount (line 315), under the *Income Tax Act*.

As a result, the Board found that the grievor's mother qualified as a dependant under subparagraph 209.80 (3) (b) of the CBI. Moreover, the Board found that, definitions aside, the affidavit makes clear the parents were "normally" residing with the grievor having done so for many years and that they were, in fact, dependant on him for shelter, food, and other necessities of life.

The Board observed that the CBI are Treasury Board regulations that must be interpreted as written, not as one may wish them to read. Accordingly, the Board found that the grievor was qualified for the SE benefits under article 209.997 of the CBI during the period of his posting.

The Board recommended that the CDS uphold the grievance by directing that any further recovery from this grievor be ceased immediately and that all monies recovered be reimbursed to the grievor.

Chief of the Defence Staff Decision

Pending.

POSTING ALLOWANCE

The grievor received Enrolment/Transfer - Posting (ETP) instructions approving his component transfer from the Reserve Force (Res F) to the Regular Force (Reg F) and indicating that he was loaded on the Qualification Level three (QL3) course in Gagetown. Upon completion of his QL3 course, the grievor was posted from Gagetown to Trenton. The grievor then requested the posting allowance (PA) for his relocation.

The Relocation Adjudication Section of the Director Compensation and Benefits Administration (DCBA) denied the grievor's request based on article 3.4.03 of the CF Integrated Relocation Program (CF IRP) 2009, stating that the PA is not payable when the posting is to the first place of duty where CF members will be employed after re-enrollment or transfer to the Reg F.

The grievor submitted a grievance arguing that his situation met the intent of the PA policy, which is to compensate for the turbulence associated with a Reg F member's relocation. He also argued that he met the career status conditions of article 3.4.03 of the CF IRP 2009 since he had completed his QL3 course in Gagetown and had completed three years of service during his Res F service.

There was no Initial Authority (IA) decision on file as the DCBA, the IA in this matter, was unable to respond within the time limit and the grievor did not agree to grant a second 180-day extension.

Board's Findings and Recommendations

The Board found that the grievor met the two qualifying criteria as set out in Section 3.4.03 of the CF IRP. Specifically, he was a Reg F member being posted from one place of duty to another and he had attained "career status."

As for the reason provided by the DCBA for denying the PA to the grievor, although not fully stated as such, the Board assumed that DCBA had concluded that the grievor was not "employed" at Gagetown because he was attending QL3 training. Based on that conclusion, DCBA then determined that the grievor's subsequent posting to Trenton was actually his first place of duty where he would be "employed." The Board was of the view that the term "employed" is not used in the CF lexicon, nor in the *National Defence Act*, when speaking of CF members. The Board further found that, while training in Gagetown, the grievor received wages for his efforts and was therefore considered to be "employed" on training.

Given that the Board found that the grievor was in fact employed and performing a duty while posted to Gagetown, the Board concluded that the grievor's subsequent posting to Trenton represented his second place of duty where he would be employed after having transferred to the Reg F. The Board concluded that the grievor was entitled to the PA for his relocation from Gagetown to Trenton.

The Board recommended that the CDS uphold the grievance and that the grievor be paid the PA for his 2010 posting to Trenton.

Chief of the Defence Staff Decision

Pending.

RECOMMENDATIONS ON SYSTEMIC ISSUES

In reviewing individual grievances, the Board sometimes finds that its recommendations with respect to a policy or a regulation may affect more than one member. In these cases, the Board makes the CDS aware that a broader problem may exist by issuing one or more systemic recommendation. The following table highlights five out of 22 systemic recommendations issued by the Board in 2011. The remainder of 2011 recommendations, as well as those issued since 2009, are available on the CFGB's Web site: **www.cfgb-cgfc.gc.ca**.

ALLOWANCE FOR LOSS OF OPERATIONS ALLOWANCE

Issue

During the course of its investigation concerning the denial of the Allowance for Loss of Operations Allowance (ALOA) to a grievor, the Board found that the granting of this benefit was left entirely to the discretion of the responsible Task Force Commander (TF Comd). As such, the definition of "military casualty," which a member must meet in order to be eligible for this benefit, was subject to different interpretations depending upon the TF Comd's point of view. In addition, there appeared to be significant discrepancies in the manner in which various offices at National Defence Headquarters were interpreting the application of this benefit. Finally, there did not appear to be any review or oversight of the decisions made regarding this benefit, nor was a TF Comd required to provide reasons for his decision to grant or deny the benefit. The Board found that the administration of the benefit lacked clear guidance, review or oversight and that action should be taken to correct these shortcomings.

Recommendation

The Board recommended that the CDS order a review of the process by which the ALOA is being administered to ensure that decisions of whether CF members meet the eligibility criteria found at CBI 205.536, including the definition of a "military casualty," are consistent with one another and with the intent of the benefit itself. This review could include the issuance of guiding principles, the imposition of a mandatory consultation with appropriate medical authorities and/or centralizing the approving authority.

Final Authority Decision

The CDS agreed with the Board's systemic recommendation that the process for administering ALOA be reviewed, and he directed the Director General Compensation and Benefits to conduct the review.

LOSS OF BENEFITS DUE TO LARGE GEOGRAPHICAL AREA

Issue As a result of changes to Post Living Differential (PLD) and Transitional PLD (TPLD) policies, some CF members living in the National Capital Region (NCR), who were posted to the area before 1 April 2008, continue to receive TPLD to compensate for higher cost of living while others, posted to the NCR after 1 April 2008, do not receive the benefit. The current application of the PLD/TPLD has created a system of "haves" and "have nots." This unfairness is not limited to the NCR. Rather, there are other TPLD areas in Canada which are affected in the same way.

Recommendation The Board recommended that the CDS direct a review of the TPLD concept to determine whether it is to be fully implemented or if the CF will simply revert to the PLD construct as it existed prior to the policy changes which led to the current unfairness. The aim must be to restore fairness in each PLD/TPLD area by providing equal benefits to all CF personnel posted to the same areas.

Final Authority Decision The CDS was satisfied that the Director General Compensation and Benefits was currently reviewing this issue with TB. Nonetheless, in an attempt to expedite this process, the CDS directed that the Chief of Military Personnel liaise with Treasury Board to verify the current status of TPLD, with a view to determining its future and to restore equity among those affected.

DE-LINKING RATIONS AND QUARTERS

Issue The grievor submitted a request to de-link rations and quarters (R&Q) which was denied on the basis that he did not have access to a "full kitchen facilities" since there was no traditional stove in the barracks kitchenette area. The grievor explained that he had access to all the necessary countertop appliances to replace a traditional stove. The evidence on file suggested that all requests for de-linking from CF members were being denied on the basis that cooking in the barracks could lead to safety, hygiene and health concerns.

Canadian Forces Administrative Order 36-14 – Entitlement to Meals and Public Rations – paragraph 5 and CANAIRGEN 012/09 – Linking of Rations and Quarters - provide the possibility for CF members to de-link R&Q. However, those policies do not provide any criteria on which to base de-linking requests. As indicated above, de-linking requests have been denied on the basis of safety, hygiene and health reasons. Although these represent valid concerns, the evidence on file and the arguments presented did not justify a policy under which all requests to de-link R&Q are being systematically denied.

Recommendation The Board recommended that the CDS order a review of the de-linking policy to clarify its intent, keeping in mind that it may be possible to address the safety, hygiene and health concerns without imposing the linking of R&Q. If it is determined that linking of R&Q must continue to be imposed, the policy review should include the issuance of guiding principles and a clear indication of the circumstances under which a request for de-linking would be approved to foster consistency in the decisions taken.

Final Authority Decision Pending.

RELINQUISHMENT OF RANK FOR MILITARY TRAINING PLAN

Issue The grievor, a senior officer, was accepted for a Military Training Plan (M Plan) under CF Administrative Order (CFAO) 9-62 – Military Dental, Legal, Medical, Chaplain and Pharmacy Training Plans. The M Plan requires that admitted applicants voluntarily relinquish their rank to captain on the start of training and prior to the actual occupational transfer (OT) on completion of training. The grievor explained that while he had expressed his willingness to relinquish his rank, he did not actually make a request to do so and thus no relinquishment could have taken place. The grievor had been retroactively reverted to the rank of captain some 26 months after starting the training.

The Board found that the relinquishment was not administered in accordance with regulations and was thus null and void.

The Board agreed that there were valid reasons for imposing relinquishment of rank upon OT under the M Plan but questioned the requirement for relinquishment at the commencement of training.

The Board found that there appeared to be no regulatory, financial or military reason to demand that M Plan candidates at the rank of major or higher relinquish their rank at the start of the M Plan training, in some cases years prior to any actual OT.

Recommendation The Board recommended that the CDS direct a review of the CFAO 9-62 policy regarding the rank required while undergoing training.

The Board also recommended that the CDS direct that a formal process be put in place for senior officer M Plan candidates to request permission to relinquish their rank and for the CDS to approve or deny it, in order to conform to regulations.

Final Authority Decision Pending.

CANADIAN FORCES POLICY ON REMISSION OF DEBTS

Issue Since its inception, the Board has seen a considerable number of grievances relating to overpayment of both pay and benefits. The debt, in some of these cases, might qualify for and be deserving of remission, yet through misunderstanding and misinterpretation, this avenue of redress appears not to be available to CF members. It is of some significance that in two grievance cases concerning overpayments, in 2004, the CDS of the day concluded that seeking remission of the debt in question was the appropriate remedy and directed that appropriate CF officials explore the feasibility of a submission to Governor in Council with the recommendation of Treasury Board (TB) to seek remission of the overpayment. The CDS went on to further issue direction to explore the feasibility of amending the *National Defence Act* (NDA) and the *CF Superannuation Act* to adopt a standardized and comprehensive approach to the recovery of overpayments.

Although the two cases were in fact submitted to TB for consideration, TB staff did not support the requests based on the fact that the CF members in the two cases did not meet the "stringent criteria" required for remission; however, when personnel at the Board questioned TB staff on the authority for the criteria used to deny the requests for remission, no clear response was given. It remains the Board's view that the remission criteria are applied on a case by case basis by the TB Ministers and it is not for the staff to make a decision given by statute to Ministers.

In the Board's view, a long-term solution for debt forgiveness would be to amend the NDA to allow the Minister of National Defence to forgive debts owing the Crown, along the lines of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* allowing for the full or partial relief of a debt under certain circumstances. In the meantime, since the DND/CF does not have published criteria or guidelines for the consideration of debts for remission, the CF should consider developing such a policy. Guidelines or policies from other government departments could serve as templates.

Recommendation The Board recommended that the CDS direct that a DND/CF policy on remission be formulated and publicized.

Final Authority Decision Pending.

SIGNIFICANT FEDERAL COURT DECISIONS

As explained earlier, in adjucating a grievance that has been reviewed by the CFGB, the CDS or his/her delegate is not bound by the Board's F&R, and if he or she does not agree with the Board, reasons must be provided. Section 29.15 of the *National Defence Act*, provides that the decision of the final authority (FA) is then final and binding and, "except for judicial review under the *Federal Courts Act*, is not subject to appeal or to review by any court." This means that, unless a member applies for judicial review, FA decisions – whether they agree with the Board or not – are final.

In 2011, a number of dissatisfied grievors applied for judicial review and were relatively successful. The resulting judicial decisions provide significant direction regarding the subjects considered. Issues that featured prominently included the adequacy of reasons, procedural fairness and bias. Even in cases where the court agreed with the CDS, the decisions were informative as they provided guidance or support with respect to decisions made or processes followed.

De Novo *Review*

In the Zeidler case, the grievor, a Commanding Officer, was removed from command, based primarily on an e-mail that the grievor sent to his subordinates which was found to be insubordinate and insulting to his chain of command. He submitted a grievance claiming that there had been a lack of procedural fairness and bias in relation to the decision to remove him from command. Having reviewed the matter, the Board concluded that although not all of the relevant administrative procedures had been followed, it did not result in procedural unfairness. The Board recommended that the CDS deny the grievance. The CDS concurred with the Board's F&R. Among other things, the CDS agreed with the Board that procedural fairness was afforded to the grievor. He found that while some documents had not been disclosed to the grievor prior to his removal, this breach had been cured during the grievance process, and no evidence of bias could be found. The CDS decided that the decision to remove the grievor from command was reasonable. The grievor applied for judicial review.

The Federal Court (FC) indicated that the CDS Guidelines on Removal from Command create legitimate expectations regarding the procedures to be followed. The FC also held that the decision to remove the grievor from his command position seemed to have been taken before he could respond to the Notice of Intent.

The FC found that "the CDS failed to live up to its mandate to provide a *de novo* review." It further stated that the CDS appeared to have merely adopted the original decision without considering that it had been rushed and made without respecting procedures. The FC disagreed that the procedural breaches had been cured and found that the evidence was sufficient to conclude that there was apprehension of bias in this case. Accordingly, the FC held that the CDS decision to deny the grievance was unreasonable. The grievor's application for judicial review was allowed, and the matter was referred back to the CDS for reconsideration.

Fairness and Transparency – Promotion process

The Zimmerman case involved the promotion process for Chaplains to the rank of colonel. While the grievor, a Commander, was ranked first by his 2003 selection board, under the Chaplain promotion process, the CDS had relied on the recommendation of the Interfaith Committee on Canadian Military Chaplaincy's (ICCMC) and had promoted the member who had placed second on the Selection Board's list. The grievor contended he was unfairly by-passed for promotion in 2003 and again in 2004. The grievor argued that the reliance on the ICCMC recommendation was unfair because its process was not transparent and there were no established and published criteria.

The Board found that the process used by the ICCMC to make the nomination which ultimately resulted in a promotion in 2003/2004 was not transparent and, therefore, there was no assurance it was fair. The Board recommended that the grievance be upheld. The CDS disagreed, concluding that despite the absence of information available to him regarding what the ICCMC did and exactly how and why it reached its promotion recommendations, he was "certain" that the ICCMC nominated the "best possible candidate" in the years in question.

The grievor applied for judicial review. The FC rendered its decision on 22 December 2009, and determined that the CDS decision was reasonable. However, on 4 February 2011, the Federal Court of Appeal (FCA) overturned the FC decision. As in the Tainsh case (next), the decision turned significantly on the adequacy of the CDS's reasons. The FCA wrote that the CDS was obligated to provide reasons as to why he departed from the Board's F&R. The FCA also noted that the CDS's main reason for not accepting the grievance was the lack of information regarding ICCMC process. For the FCA, this raised issues of fairness and called into question whether the ICCMC had any criteria at all for its recommendations. For these reasons, the FC decision was set aside, the CDS decision was quashed and the matter was remitted to the CDS to determine the remedy that should be granted to the grievor.

Adequacy of Reasons

The Tainsh and Riach decisions deal with the adequacy of the CDS's reasons in the grievance process. In the first case, the grievor had been released under item 5(e) of the table to article 15.01 of the *Queen's Regulations and Orders for the Canadian Forces – Irregular Enrolment*, on the basis that she was dependent on a sleeping medication prior to her enrolment and had failed to disclose her condition.

Upon review of the file, the Board found it had not been established that the grievor was dependent on the drug in question and found that her medical issues did not justify a release for Irregular Enrolment or a medical release. Accordingly, it recommended that the CDS uphold the grievance.

The CDS disagreed with the Board's F&R and concluded that it had not been established that the grievor was "not" dependent prior her enrolment. Therefore, he was of the view that the release was appropriate. The grievor applied for judicial review.

The FC noted that the CDS had relied on the Director of Medical Policy opinion and had not fully explained why the Board's finding that there was no chronic medical condition, based on two doctors' opinions, was rejected. The FC held that CF members "have a procedural entitlement to adequate reasons" which is recognized by the *National Defence Act*. Given its determination on this issue, the FC sent the file back to the CDS for reconsideration.

On the other hand, in the Riach case, the FC stated that it is not necessary for the CDS to write a comprehensive decision if he agrees with the Board's F&R. In that case, the grievor had grieved the Notice of Intent to recommend release he had received from his unit administration officer (Admin O), alleging that the Admin O was biased against him as she had a personal relationship with his ex-common-law spouse. The Board reviewed the grievance and found no evidence of bias toward the grievor. It explained that the simple fact that the Admin O and the grievor's ex-common-law spouse knew each other was insufficient to demonstrate that bias, real or apprehended, existed. The Board recommended that the grievance be denied and the CDS agreed.

The grievor applied for judicial review, contending that the CDS did not apply the correct test for bias. The Attorney General agreed that the CDS was not clear in his formulation, but he added that since the CDS endorsed the Board's findings, which formulated the correct test, it did not have an impact on the outcome. The FC concluded that the CDS's decision could lead to confusion, but added that the Board's formulation and application of the test for bias were not disputed. Furthermore, the FC confirmed that, when the CDS endorses the Board's F&R, there is no requirement for the CDS to expand further.

Conclusion

These four cases have confirmed the rights of members to be treated fairly when important decisions are being made, such as removal from command and promotion decisions. They have also reinforced the CDS's statutory obligation to provide reasons for rejecting a Board finding or recommendation, while confirming that the CDS can simply adopt the Board's F&R when he agrees with them – this is an important validation of the Board's work and could significantly reduce timelines at the Final Authority (FA) level. By endorsing the Board's F&R in lieu of developing a separate decision, the FA could effect a quicker turnaround, especially considering that the CDS has agreed with the Board in more than 75% of the cases in the past 10 years.

2011 FINDINGS AND RECOMMENDATIONS

The following table lists all 134 findings and recommendations (F&R) issued by the Board in 2011 and provides an overview of the types of grievances reviewed and the CFGB's position with regard to each case. A full summary of these cases, including the decision of the Final Authority (FA), can be found on the Board's Web site: **www.cfgb-cgfc.gc.ca**.

**Acronyms are explained in the Glossary (p. 50).*

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
1.	2010-047	Selection Boards	Partial Grant	The Board concluded that there was a lack of transparency in the selection process for courses. The Board recommended the grievor be allowed to attend the course. The Board also made a recommendation of a systemic nature, namely, that the Selection Committees should put in place an evaluation system that respects the legal requirements for equity and transparency.
2.	2010-059	Harassment Promotion	Partial Grant	The Board determined that the grievor's allegations of harassment, which had delayed his promotion, met the definition of harassment and should have been investigated. The Board recommended that the grievor's promotion be backdated by one year.
3.	2010-071	Administrative Review and Release Drug	Denial	The Board concluded that the decision to release the grievor for drug misuse was reasonable. The Board found that release item 5(f) was the most appropriate under the circumstances.
4.	2010-075	In Vitro Fertilization Leave entitlement Medical Treatment	Partial Grant	The Board found that the grievor had been compensated for those costs associated with ICSI to which he was entitled and that he was not entitled to costs associated with IVF. The Board found that the grievor should not have been forced to take annual leave to undergo approved medical treatments. The Board recommended that the grievor's annual leave entitlement be re-credited accordingly.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
5.	2010-076	Counselling and Probation Misuse of Alcohol	Grant	The Board found that the decision to place the grievor on C&P for misuse of alcohol was unjustified given the lack of evidence. The Board recommended that the C&P be removed from the grievor's file.
6.	2010-077	Prior Learning Assessment Review Transfer and Enrolment	Denial	The Board found that the grievor's PLAR appeared to have been conducted fairly and that the offer of enrolment which he accepted was based on CF needs at the time according to the Preferred Manning Level and Trained Effective Strength figures.
7.	2010-080	Release – Compulsory Sexual Misconduct	Denial	The Board found that the matter of the alleged "mishandling" of the situation in question by the supervisor and the details of his interaction with the grievor was a matter for the Courts, and not for the CF. The Board also found that the grievor's release item 2(a) was reasonable in the circumstances.
8.	2010-082	Relocation Exceptional Circumstances	Partial Grant	The Board found that the grievor's circumstances were exceptional and warranted the CDS discretion in retroactively lifting a posting restriction to allow for reimbursement of some relocation expenses.
9.	2010-083	Restoration Expenses for Personal Vehicle	Grant	The Board found that the grievor's circumstances were exceptional and recommended that the grievance be allowed by invoking Ministerial discretion pursuant to paragraph 209.013 (2) of the CBI so as to permit the reimbursement of the expenses for restoring the vehicle's roadworthiness. The Board also recommended that the CF immediately co-operate with TB in order to amend the applicable provisions so as to regulate the granting of reimbursement for storage and restoring the roadworthiness of a personal vehicle of a CF member on deployment or attached posting in accordance with paragraph 12(3) of the NDA.
10.	2010-084	Procedural Fairness Removal from Command	Grant	The Board found that the decisions to repatriate the grievor and to cease his Class C Reserve Service were unreasonable. The Board recommended that all documents related to the grievor's repatriation be amended to reflect a category A repatriation and that he be offered another opportunity to deploy to Afghanistan in a position commensurate with his rank and experience.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
11.	2010-085	Personnel Evaluation Report Repatriation	Grant	The Board recommended that the theatre PER be removed from the grievor's records and disposed of accordingly.
12.	2010-086	Promotion	Grant	The Board recommended that the CDS waive the standard to meet the language requirement and promote the grievor to the rank of colonel effective the date upon which he assumed the duties and responsibilities of the position.
13.	2010-087	Door-to-Door Move Interim Lodging, Meals and Incidentals	Denial	The Board found that there was not sufficient evidence to find that the grievor was unable to arrange a door-to-door move due to circumstances beyond his control.
14.	2010-088	Door-to-Door Move Interim Lodging, Meals and Incidentals	Grant	The Board found that the interpretation of "beyond a CF member's control" should be more flexible, and that it was not unreasonable to view the circumstances in this case as being beyond the grievor's control. The Board also provided a systemic recommendation, suggesting that the CDS direct the DGCB to review the policy on providing additional ILM&M on door-to-door moves, since the current policy is overly restrictive and inflexible.
15.	2010-089	Diving Allowance	Grant	The Board found that the grievor was eligible for the allowance because he was filling a duly authorized designated position at his home unit whilst he was temporarily away on training. The Board recommended that the CDS direct a review of the files of all CF members who attended the same course as the grievor or another EOD course at Eglin Air Force Base and who were denied the DIVGA, in order to ensure that all attendees who were appropriately qualified and who were posted into a position authorized by the Minister receive the DIVGA. The Board also recommended that the CDS direct a review of the DIVGA and other similarly affected environmental allowances and their administrative directions to ensure that the administrative directions do not serve to limit benefits authorized by the applicable CBI.
16.	2010-090	Relocation of Dependants	Denial	The Board found that the grievor was not entitled to have his HG&E returned to Canada at Crown expense because of a marital breakdown and that the special powers of the Minister could not be invoked in the circumstances.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
17.	2010-091	Interim Lodging, Meals and Incidentals	Denial	The Board concluded that the grievor had chosen, for personal reasons, not to live in commercial accommodations but rather to live at his daughter's residence and was therefore not entitled to meal allowances.
18.	2010-092	Accommodation Procedural Fairness Release – Medical	Partial Grant	The Board found that the AR/MEL process was incomplete and fundamentally flawed because the grievor was not afforded procedural fairness, which led to his immediate release from the Res F, without having been considered for a period of retention. The Board recommended that the CDS declare the grievor's release from the Res F void *ab initio* and direct that a new AR/MEL be conducted on the grievor (as a member of the P Res) to determine whether he should be retained, possibly up to three years, or be medically released with appropriate notice.
19.	2010-093	Allowance – Loss of Operational Allowances	Grant	The Board concluded that it was likely the grievor had contacted a bacterium in Afghanistan and therefore, it was reasonable to conclude that the grievor had become ill as a direct result of the conditions of his deployment. The Board recommended that the grievor be paid the ALOA.
20.	2010-094	Medical Treatment Spectrum of Care	Denial	The Board was satisfied that the CF took reasonable steps to ensure that the grievor's deployment in Afghanistan did not result in his being afflicted with tuberculosis and even offered to conduct additional testing at no cost to him.
21.	2010-095	Harassment Remedial Measures	Grant	The Board found the grievor had not made a formal harassment complaint, and therefore, it could not make any findings in this regard. The Board found that the content of the Divisional Note related to the grievor did not pertain to performance or conduct deficiencies and contradicted the grievor's PDR and PER. The Board recommended that any copies of the Divisional Notes be removed from the grievor's files.
22.	2010-096	Procedural Fairness Release	Grant	The Board concluded that since the grievor was released without procedural fairness, his release should be rendered void *ab initio*, such that his employment relationship with the CF be deemed to never have ceased.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
23.	2010-097	Intended Place of Residence	Denial	The Board found, in accordance with CBI article 209.973 – Exception – Release outside Canada – of the CF IRP, that the grievor's relocation expenses to his IPR, which was outside of Canada, could "not exceed the costs that would have been borne by the public had the move been to the port of disembarkation or border point in Canada closest to the grievor's place of duty."
24.	2011-001	Procedural Fairness Removal from Command	Grant	The Board found that the grievor was not afforded procedural fairness as he did not receive disclosure of all the documents considered by the Commander in making his decision to relieve the grievor from Command. Thus, the Board concluded that the original decision could not stand and the decision should be reconsidered. The Board recommended that the grievance be upheld and that the remedy provided to the grievor include: compensation for the lost benefits; restoration (to the extent possible) of the grievor's credibility, character and reputation; and re-establishment (to the extent possible) of the grievor's career path.
25.	2011-002	Class B Reserve Service	Denial	The Board was unable to find that the grievor was treated unfairly by the process used to select a reservist to temporarily fill the Reg F position.
26.	2011-003	Education Allowance	Denial	The Board found that the issue being grieved became moot when the grievor transferred from the Reserve to the Reg F, as she was now entitled to the education allowance limited to Reg F members. The Board recommended that the CDS reject the grievance without deciding on the merits of any issues raised and that the grievance file be closed. The Board nonetheless noted that it was pleased to hear that a feasibility study would be undertaken, with the view of offering the education programs to all reservists.
27.	2011-004	Relocation Right to Grieve	No Standing	The Board concluded that, since the grievor had received everything he was entitled to on relocation, there was no live controversy in the grievance and the grievance was therefore moot. The Board found no reason to consider the merits of the grievance further.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
28.	2011-005	Transfer and Enrolment Waiver	Denial	The Board found that the review conducted on the grievor's file to determine whether he should be granted a training waiver were complete, fair and the resulting conclusion reasonable. The Board also noted that the grievor had been given a waiver for the basic military qualification and therefore, it was all the more important that the grievor receive formal leadership training within the CF.
29.	2011-006	Occupational Transfer Pay Promotion	Partial Grant	The Board concluded that the grievor's career was mismanaged to his detriment. As a result, the Board recommended that, based on successful completion of the grievor's MOC qualification course, the grievor be promoted to lieutenant retroactive to 10 January 2005, and to captain effective 20 June 2008.
30.	2011-007	Special Commuting Assistance	Denial	The Board noted that CFAO 209-28, paragraph 4, indicated that consideration for move benefits may be given when geographical boundaries encompass both an old and a new place of duty; however, the Board concluded that paragraph 4 did not apply in this case since there was only one geographical area for the region.
31.	2011-008	Discrimination In Vitro Fertilization	Partial Grant	The Board found that, as was indicated by the Court, the refusal of the CF to pay for ICSI treatments was wrong and discriminatory. The Board also found relief should be granted against the CF discriminatory practice in refusing to pay based on gender-related grounds. The Board recommended that the grievor's expenses associated with the ICSI portion of the infertility treatments be reimbursed. However, the Board recommended that the CDS deny that portion of the grievance which related to the costs of the IVF treatments undergone by the grievor's wife.
32.	2011-009	Class B Reserve Service Overpayment Recovery of Overpayment	Partial Grant	The Board found that the grievor was not entitled to Class A or B pay during the period 29 September to 11 November 2009 because there was no authorization in place for Class A or B service and the grievor did not perform any authorized employing unit duties during that period. The Board also found that the precipitous recovery rate of the grievor's overpayment was unreasonable and unnecessarily harsh and that authority for an extended recovery period in excess of six months should have been sought in accordance with paragraphs 8 to 10 of CFAO 203-3 – Prevention and Detection of Overpayments and Recoveries from Pay.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
33.	2011-010	Administrative Action	Partial Grant	The Board reviewed each of the seven incidents and found that four of the incidents were not supported by the evidence on the file and should therefore be removed from the IC. The Board found that the remaining three incidents demonstrated that the grievor failed to comply with direction and that the IC was therefore justified and reasonable. The Board recommended that the grievance be partially upheld and that the four unsupported incidents be removed from the IC; but, that the amended IC remain on the grievor's records.
34.	2011-011	Personnel Evaluation Report	Partial Grant	The Board recommended that the CDS partially grant the grievance by ordering that eight factors be amended and that the promotion recommendation of "ready" be amended to read "immediate." The Board also recommended that section 6 of the PER be completed and that consideration be given as to whether a supplementary selection board is required.
35.	2011-012	Personnel Evaluation Report	Partial Grant	The Board recommended that the grievance be partially granted and that the grievor's rating for PF1 (Leadership) be increased from N to AA.
36.	2011-013	Termination Class B Reserve Service Special Leave	Partial Grant	The Board found that the sole reason that the grievor submitted his request for early termination was for the purpose of being deployed in Afghanistan on a Class C Reserve Service. The grievor's chain of command however, appeared to have used the request in order to terminate his Class B TOS. The Board recommended that the CDS offer the grievor a Class B TOS commensurate with the grievor's rank and experience and of at least the number of days the grievor otherwise would have served had he not been terminated.
37.	2011-014	Pension Entitlements Reserve	Denial	The Board found that the grievor did not qualify to be a contributor under Part I of the CFSA because he had not accumulated the minimum of 1,674 days of service in any 60-month period starting on or after 1 April 1999.
38.	2011-015	Real Estate and Legal Fees	Denial	The Board found that the grievor was not entitled to be reimbursed for the benefits associated with the sale of his home under the CF IRP, noting that the grievor had been advised by the Brookfield Relocation Services that he would not be reimbursed for the costs of the sale if he rented his home.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
39.	2011-016	Separation Expense Imposed Restrictions	Denial	The Board concluded that Class B reservists, including the grievor, were not entitled to IR or SE.
40.	2011-017	Acting While So Employed Promotion	Denial	The Board found that the grievor did not meet the criteria to be granted an AWSE promotion; nor did the error made in regards to his replacement create such an entitlement.
41.	2011-019	Maternity and Parental Allowance Recovery of Overpayment	Denial	The Board was satisfied that the CF decision to recover MATA/PATA was reasonable and taken in accordance with policies. With regards to the repayment schedule, because the grievor was no longer performing Reserve Service, there was no pay account to deduct from. Therefore, the Board agreed that the grievor had to repay the debt in one lump sum.
42.	2011-020	Loss of Benefits Due to Large Geographical Area	Grant	The Board noted that the CDS had the authority to determine the geographical areas included in a place of duty, and as such, he could uphold the grievance by modifying the geographical area. The Board provided a systemic recommendation that the CDS direct a reconsideration of the NCR geographical boundary, with the view to creating several smaller "places of duty" within the NCR area.
43.	2011-021	Relinquishment of Rank Circumstances Governed by more than one Policy	Grant	The Board found that the grievor could have worked at his substantive rank of major effective 1 Apr 93, the effective date of NDHQ Instruction ADM (per) 2/93 because it contained new provisions allowing a CF member to be over-ranked in a position.
44.	2011-022	Course Failure	Denial	The Board found that the grievor's RTU was reasonable in the circumstances, based on the attitude and behaviour deficiencies identified, and the corrective measures given to the grievor as a result.
45.	2011-023	Administrative Review Medical Employment Limitation Universality of Service Principle	Partial Grant	The Board recommended that the grievor's MEL and medical situation be re-evaluated, including soliciting further input from the grievor's civilian medical specialist to determine the grievor's future in the CF.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
46.	2011-024	Personnel Evaluation Report Selection Boards	Grant	The Board recommended that the CDS direct that the selection boards for the years 2009 and 2010 for CF members of the same rank and of the same branch as the grievor be completely redone, removing any specific scoring assignment to PER rankings in the scoring criteria.
47.	2011-025	Home Equity Assistance Integrated Relocation Program	Partial Grant	The Board indicated that, based on the evidence on file, the grievor's community fell within the HEA policy definition of a depressed market area, "... a community where the housing market has dropped more than 20%," which would entitle him to reimbursement of 100% of his loss. The Board recommended that the CDS direct that the grievor's HEA application be submitted to TBS with the full support of the CF, for consideration of the grievor's request for a depressed market designation and reimbursement of 100% of the loss on his home sale.
48.	2011-026	Administrative Action	Denial	The Board found that the grievor lacked the leadership attributes of an officer ready to assume important responsibilities on an operational mission. In the circumstances, the Board found that the decision to withdraw the grievor's nomination for deployment was justified and reasonable.
49.	2011-027	Pension Benefits Pension Entitlements	Denial	The Board found that pursuant to the CFSA and its regulations, the grievor was not entitled to complete a Form 106 to exclude his Supplementary Reserve service. The Form could not be used by Reservists, nor could it be used to exclude prior service from several years ago.
50.	2011-028	Obligatory Service Release – Voluntary	Grant	The Board found that, based on the grievor's entire performance at RMC, she should have been subject to a PRB and a decision should have been rendered as to whether or not she could continue. Although there can be no certainty as to the outcome of the PRB, the Board was of the view that a recommendation for compulsory release would have been most likely. The Board recommended to the CDS that the grievance be upheld and that the grievor's release item be changed to 5(d), indicating a compulsory release without financial obligation.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
51.	2011-029	Transitional Post Living Differential	Denial	The Board concluded that the freeze on TPLD rates had been authorized by TB and that the grievor was not entitled to TPLD. The Board recommended that the CDS direct a policy review in order to either recommence the transitional methodology to further reduce TPLD benefits, or return to the practice of granting this allowance as it was before the TPLD methodology was introduced.
52.	2011-031	Personnel Evaluation Report	Partial Grant	The Board recommended that the CDS partially grant the grievance by increasing four AFs and two PFs, and by amending the narratives to reflect those changes based upon the information that was available to both the Supervisor and the Reviewing Officer.
53.	2011-032	Transitional Post Living Differential	Denial	The Board found that the grievor was not entitled to receive TPLD. However, the Board also noted the inherent unfairness that some CF members continue to receive the benefit and others do not. The Board also pointed out that this unfairness is not limited to the NCR, but to other TPLD areas as well. Although it was recommended that the grievance be denied, the Board made a systemic recommendation that the CDS direct a review of the TPLD concept to determine whether it will be fully implemented or not so as to restore fairness by providing equal benefits to all CF members posted to the same areas.
54.	2011-033	Release – Medical	Denial	The Board found that the grievor had MEL that were in breach of the U of S, and as such, the decision to release the grievor was reasonable.
55.	2011-034	Administrative Action	Partial Grant	The Board reviewed the circumstances leading to each of the remedial measures, the apparent indiscriminate handing out of ICs to other officers – some of which were later removed because the issues were benign and only warranted a simple debrief – as well as the statement of the grievor's supervisor that the grievor displayed an enthusiastic, professional and co-operative attitude towards the training and the mission. The Board concluded there was sufficient doubt about the justification and administration of the remedial measures that they must be struck from the grievor's records.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
56.	2011-035	Abuse of Authority Administrative Action Harassment Recorded Warning	Partial Grant	The Board noted that the grievor accepted the RW and had not contested it. Therefore, the Board did not deal with that issue. As for the harassment complaint, the Board noted that an investigation into certain allegations was still under way. Since the outcome of that investigation could again result in a grievance, the Board determined that it would be premature to deal with that issue. The Board did not agree that the grievor had been the subject of two administrative measures for the same incident, and that his withdrawal from deployment was punitive.
57.	2011-036	Personnel Evaluation Report	Partial Grant	The Board recommended to the CDS that the grievance concerning the 2007/2008 PER be partially upheld by changing three of the PFs.
58.	2011-037	Personnel Evaluation Report	Grant	The Board found section 5 of the PER did not provide an overall picture of the grievor's true potential. The Board also found that the comments written in that section contradicted what the grievor had actually accomplished in accepting the duties of a higher rank even though he had little experience working at his current rank.
59.	2011-038	Accumulated Leave Cash Out of Retirement Leave	Denial	The Board found it reasonable and appropriate for the CF to impose a forfeiture of 15 days of excess annual leave the grievor had received in error.
60.	2011-039	Release – Medical	Grant	The Board noted that the grievor's representations were not considered during the AR process and his medical condition was never mentioned. Under the circumstances, the Board found that the DMCARM decision to release the grievor under item 5(f) was unreasonable. The Board concluded that a medical release would have been more appropriate.
61.	2011-040	Terms of Service	Denial	The Board noted that the TOS structure for the grievor's current occupation required a member serving on an IE 20 to transition to an IE 25 and there were no provisions for a CE in the ADM (HR- Mil) Instruction 05/05, the regulations pertaining to the transition to new TOS in effect at the time. Consequently, the Board concluded that the grievor was treated fairly and correctly in being required to accept the new TOS of IE 25.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
62.	2011-041	Administrative Review Impartiality Release – Compulsory	Partial Grant	The Board concluded that the grievor should not have been released, but added that the CDS does not have the authority to order that a wrongly released CF member be reinstated. The Board recommended that the CDS acknowledge that the grievor should not have been released, and that his files be annotated accordingly. The Board also recommended that, should the grievor choose to re-enrol, the CDS facilitate the process.
63.	2011-042			
64.	2011-043	Personnel Evaluation Report	Denial	The Board found that the grievor's PER accurately reflected his performance and potential for the reporting period and that the Reviewing Officer had fairly balanced the grievor's performance at his unit with his performance on the course to come up with a score that was appropriate.
65.	2011-044	Acting While So Employed	Partial Grant	Until 1 June 2009, the CF policies made it clear that when Supp Res members serve with the Regular Force or Res F components, they must meet the same operational standards as members of these components. The Board recommended that the CDS grant the grievor an AWSE promotion to the rank of Chief Petty Officer 1st class for the period 2 June to 31 October 2009.
66.	2011-045	Separation Expense Overpayment	Grant	The Board concluded that the grievor's move at Crown expense in 1999 should have been cancelled and that the CF should have considered the previous place of duty as the last place of duty where the grievor and his family had moved at Crown expense. Consequently, according to the Board, all the benefits associated with the grievor's subsequent transfers, including the separation expenses, had to be recalculated as if the grievor's dependants and HG&E had remained at the place of duty where he was located before his 1999 transfer.
67.	2011-046	Career Progression Promotion	Grant	The Board noted that the only reason the grievor was denied his promotion, is that, due to a medical condition, he had been unable to complete an additional three sit-ups on his EXPRES Test. The Board recommended that the CDS waive the requirement for the grievor to successfully pass the EXPRES Test and direct that he be promoted to corporal.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
68.	2011-048	Promotion	Grant	Based on the grievor's performance and his evaluation reports, in particular the fact that the grievor had performed the duties of a higher rank for a significant period of time, the Board found that the grievor met the requirements for an accelerated promotion. In the event that the CDS disagreed with the Board's findings and recommendation, the Board recommended as an alternative that the grievor be granted an AWSE promotion for the period during which he performed the duties of a higher rank.
69.	2011-049	Recorded Warning	Grant	The Board concluded that the measure taken by the DPM PS, which is responsible for respect and application of the Military Police Professional Code of Conduct, was sufficient under the circumstances and that the RW, which added nothing, was arbitrary and excessive.
70.	2011-050	Class C Reserve Service Medical Treatment	Denial	The Board found the grievor had no entitlement to an extension of his Class C Res Svc pursuant to CANFORGEN 174/07. The Board noted that the intent of this policy was to assist reservists who were injured in a SDA to recover from disability or incapacity and to be reintegrated into the workforce.
71.	2011-051	Separation Expense Dependants	Denial	The Board found that the grievor's children were not normally in his custody and control, neither in law nor in fact, since the date of his separation with his spouse. Therefore, pursuant to the CBI definition, the grievor no longer had a dependant spouse or children. Thus he was not entitled to SE benefits.
72.	2011-052	Posting Allowance	Denial	The Board found that the grievor was not entitled to a PA on his first Reg F posting after his CT. The Board recommended that the DGCB conduct a review of the CBI and CF IRP provisions as they pertain to PA on CT or re-enrolment.
73.	2011-053	Pay Transfer from Reserve Force to Regular Force	Denial	The Board found that the grievor's qualifying service was correctly calculated and that he had no entitlement to Pay Level 3.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
74.	2011-054	Apologies	Denial	The Board found the actions and decisions by CF authorities were reasonable and justifiable in the circumstances and also found there was a lack of evidence to substantiate any claims of malice or bad faith. With the exception of one e-mail that could have been better worded, the Board did not find any evidence that the grievor was the target of an e-mail smear campaign aiming to discredit her, as she alleged.
75.	2011-055	Harassment	Partial Grant	The Board recommended that the CDS acknowledge that the behaviour of the superior towards the grievor, in terms of one incident, constituted harassment. The Board also recommended that the CDS verify that adequate measures were ultimately taken to restore a harassment-free work environment and that he so inform the grievor.
76.	2011-056	Progress Review Board Release – Compulsory	Denial	Although the Board acknowledged there were medical issues, it found there was more than enough evidence that the grievor was failing to adapt to military life after being given a number of opportunities to improve her attitude. The Board concluded that item 5(d) was the appropriate release item.
77.	2011-057	Entry into the Promotion Zone Promotion Recruitment	Denial	The Board was unable to conclude that the grievor's training was unduly delayed in comparison to his peers and found that his promotion to captain effective the date he completed his MOSID training was reasonable and in accordance with policy.
78.	2011-058	Relocation Benefits	Partial Grant	The Board found that chapter 12 of the CF IRP does not exclude relocations upon re-enrolment nor does it limit its application to active CF members who are posted back to Canada. The Board recommended that the CDS order that the grievor be reimbursed all moving expenses directly related to his relocation.
79.	2011-059	Pay Terms of Employment for Reservists	Grant	The Board concluded that it was inappropriate for the grievor to have been asked to relinquish his substantive rank of Chief Petty Officer 2nd class (CPO2) when he was first hired. Consequently, the Board found that since the grievor was a CPO2 and carried out the duties of a CPO2, he ought to have been paid accordingly.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
80.	2011-060	Allowances and Benefits Integrated Relocation Program	Denial	The Board found that the grievor was not entitled to be allocated increased Custom funds in order to accommodate the reimbursement of excess shipping costs; there being no provision under the *CF IRP* to provide the extra funding.
81.	2011-061	Promotion	Denial	The Board found that the grievor's occupation is a specialist occupation. Pursuant to CFAO 11-6 specialist officers commissioned under the UTPNCM must serve three years before being considered for promotion to the rank of lieutenant (Navy). On the issue of accelerated promotion, the Board referred to paragraph 18 of CFAO 11-6 which states that for officers in a specialist occupation, only those in the rank of captain or above are eligible for accelerated promotion. The Board found that the grievor was not eligible for accelerated promotion.
82.	2011-062	Time Credit for Promotion	Denial	The Board was satisfied that the PLAR was complete and correct and accurately reflected the grievor's previous military service, skills and qualifications. The Board found the rank and time credit the grievor received were appropriate and in accordance with policy.
83.	2011-063	Prior Learning Assessment Review Promotion	Denial	The Board found that the process to effect the grievor's promotion, while not unreasonable, could have been concluded more efficiently. However, the Board noted that the promotion was backdated to the earliest possible date, which was to the grievor's advantage.
84.	2011-064	Temporary Dual Residence Assistance	Grant	The Board found that the grievor's mortgage interest and early mortgage repayment penalty should be recalculated in accordance with his actual mortgage payout amount.
85.	2011-065	Transportation Expenses Respect of Procedures/ Policies	Denial	The Board concluded that, by using his personal credit card to rent a vehicle, the grievor negated the underwriting protection offered by the federal government and entered into a personal contract with the rental agency. The Board found that the CF should not bear the costs of the grievor's car accident.
86.	2011-066	Administrative Action Qualification standards	Denial	The Board concluded that the grievor had failed his EXPRES Test for reasons beyond his control and that the CO's decision to administer an IC was not reasonable. However, the Board was of the opinion that the grievor second failure was due solely to the grievor and that as a result, he deserved an IC, as required by DAOD 5023-2.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
87.	2011-067	Component Transfer Pay Overpayment/ Remission	Grant	The Board recognized that the relationship between CF members and the Crown is not contractual in nature; however, the Board indicated that the Crown should honour its commitments. The Board concluded that an error in pay occurred but that it would be unreasonable and unjust to collect this debt from the grievor or from other CF members who were given incorrect pay rates upon component transfer. The Board recommended that the CDS direct department authorities to prepare a submission to be forwarded to TB recommending remission of the grievor's debt and that all other CF members similarly situated to this grievor should likewise have their cases put forward. The Board further recommended that recovery be ceased until a decision is made by the GIC.
88.	2011-068	Harassment Situational Assessment	Denial	In assessing the evidence on file, the Board found that the Responsible Officer's decision not to order further investigation in the grievor's harassment allegations against her CO was reasonable in the circumstances.
89.	2011-069	Re-Enrolment Principal Residence	Denial	The Board found that the grievor was not entitled to relocation benefits for expenses incurred prior to his transfer to the Reg F.
90.	2011-070	Medical Condition Medical Employment Limitations	Denial	Considering the nature of the specific medical issue and the grievor's responsibilities, the Board found that the MELs were required and reasonable and that they could not be safely eliminated.
91.	2011-071	Remedial Measures Procedural Fairness Harassment	Partial Grant	The Board found that the grievor should be administered a new IC with a clear description of his conduct deficiency and the actions required to overcome that deficiency.
92.	2011-072	Recovery of Overpayment/ Remission	Partial Grant	The Board found that it would be unreasonable and unjust to collect the full amount of the overpayment from the grievor. The Board recommended that the CDS direct the appropriate authorities to prepare a submission to be forwarded to the TB for remission of one half of the grievor's debt.
93.	2011-073	Time Credit for Promotion	Partial Grant	The Board found that no additional relevant skills of military value could be credited by the CDS other than those directly associated with his qualifications granted upon re-enrolment.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
94.	2011-074	Incentive Pay Category Class B Reserve Service Claims against the Crown	Denial	The Board concluded that the grievor had a legitimate expectation that her Statement of Understanding would be ready for her to begin employment on the agreed upon date. The grievor was unemployed for 43 days, through no fault of her own. The Board noted, however, that the remedy sought amounted to a claim against the Crown and that the appropriate authority to resolve such issues is the DCCL.
95.	2011-075	Personnel Evaluation Report	Denial	The Board found that the grievor provided no justification or substantiation to warrant any increase of the PER scores. Without further corroboration to support higher scores, the Board was unable to conclude that the PER did not accurately reflect the grievor's performance and potential for the period in question.
96.	2011-076	De-Linking Rations and Quarters	Grant	The Board was of the view that the countertop appliances available to the grievor, while smaller than a conventional stove, satisfied the definition of a stove. Consequently, for the purpose of de-linking R&Q, the Board found that the grievor's situation met the requirements of CANAIRGEN 012/09 by his having access to full kitchen facilities.
97.	2011-077	Relinquishment of Rank	Grant	The Board found that the relinquishment of rank, as required by the M Plan policy, is not a TB requirement, and that, in accordance with QR&O 11.12, relinquishment can only occur when a CF member requests relinquishment and permission is granted by an appropriate authority; the MND, the CDS or a designated ADM. Given that the retroactive reversion could not stand, the Board recommended that the CDS declare the grievor's reversion to captain to be null and void, and direct that his pay as a major be restored for the M Plan training period.
98.	2011-078	Promotion Compulsory Occupational Transfer	Denial	The Board found members in the rank of second lieutenant who, after failing training, transferred military occupation would have their EPZ date to lieutenant recalculated based on the date the transfer is effective. The Board found that the decision to establish February 2007 as the grievor's EPZ date to lieutenant was reasonable.
99.	2011-079	Termination Class B Reserve Service	Partial Grant	The Board found that because the grievor was not serving at the time of his arrests, the Code of Service Discipline did not apply; however, as a CF member, he had no option but to report the fact that he had been arrested. In the Board's opinion, the grievor's Class B service should not have been terminated as the proper course of action would have been to assign him to administrative duties until the completion of the investigation.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
100.	2011-080	Reserve Respect of Procedures/ Policies	Partial Grant	The Board found that the hiring process was not carried out in accordance with policies as there had been no 30-day notification of a Class B opportunity exceeding 90 days and there had been no competition held to fill the position. The Board recommended that an employment opportunity message be promulgated for the position once the current incumbent's term of employment is completed, thus giving the grievor the opportunity to apply for the position.
101.	2011-081	Recorded Warning Personnel Development Review	Partial Grant	The Board found that the grievor ought to have received an IC before being issued with a RW. Moreover, the Board found that the IC referring to the grievor's leadership skills should be removed from his file because he had never been formally counselled by his Chain of Command regarding this deficiency, nor had he been mentored in terms of his leadership skills as he had been led to expect. The Board found that the IC addressing the lack of dedication was justified because the grievor had been previously warned about this issue.
102.	2011-083	Separation Expense	Partial Grant	The Board recommended that the SE benefits paid to the grievor after his marriage and new posting not be recovered.
103.	2011-084	Family Care Assistance / Definition of Dependant	Denial	The Board found that it is unreasonable to expect an 18-year-old full-time student, who is also employed, as was the case with this grievor's daughter, to care for younger siblings for an extended period of time, as well as unfair and unreasonable for the CF not to reimburse a CF member for his childcare or attendant care services for younger children, because an 18-year-old resides with him/her. While the Board recommended that the CDS deny the grievance, it also recommended a change to the regulation in order to reflect CF members' entitlement to childcare services reimbursement, despite an 18-year-old residing with them.
104.	2011-085	Component Transfer Pay Special Commissioning Plan	Denial	The Board found that the grievor was correctly transferred under the SCP and that she was not in a specialist occupation for pay purposes.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
105.	2011-086	Acting While So Employed	Grant	The Board observed that the acting pay policy for colonels and above was based on TBS policy for Executive Acting Pay, and that this policy specified that acting pay would be granted based on the incumbent acting in the position for a minimum of 90 days. Accordingly, the Board found that the same principle should apply to CF members under the rank of colonel and that the grievor met this requirement.
106.	2011-087	Medical Treatment	Partial Grant	The Board concluded that the grievor had not been denied basic health care or support by the CF Health Services. The Board recommended however that the CDS direct the Chief of Military Personnel/Director General CF Health Services and the grievor to cooperate in the setting up of a case management team to assess and manage the grievor's prosthetic needs, including the claimed work and expenses.
107.	2011-088	Personnel Evaluation Report	Grant	The Board compared the PF ratings to the grievor's PER narrative and found that the grievor's PER scoring was essentially based on one incident and was not reflective of the entire reporting period. The Board recommended that a new PER be written to account for the entire reporting period.
108.	2011-089	Acting While So Employed	Grant	The Board recommended that the CDS waive the EPZ date and ILQ criteria and grant the grievor an AWSE promotion to the rank of Warrant Officer for the three-year period he occupied a Warrant Officer position.
109.	2011-090	Personnel Evaluation Report	Partial Grant	The Board found that, except for one AF and one PF rating, the grievor's PER accurately reflected his performance and potential.
110.	2011-091	Component Transfer Pay Overpayment/ Debt Write-off	Grant	The Board found that it would be unreasonable and unjust to collect this debt from the grievor or from the other CF members who were given incorrect pay rates upon CT. The Board recommended that the CDS direct that department authorities prepare a submission to be forwarded to TB recommending remission of the grievor's debt and that all other CF members similarly situated to this grievor should likewise have their cases put forward. The Board further recommended that recovery be ceased until a decision is made by the GIC.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
111.	2011-092	Annual Leave Attach Posted Benefits Isolation Allowance	Grant	The Board found that the grievor should have been attached-posted to the isolated post, as the benefits in question were meant to compensate for harsh environmental conditions which applied to the grievor regardless of the means by which he was sent to the isolated post. The Board recommended that the grievor be retroactively attached-posted to the isolated post for the applicable time, and that the grievor receive all related benefits.
112.	2011-093	Component Transfer Pay Overpayment/ Debt Write-Off	Grant	The Board found that, in the circumstances, it would be unreasonable and unjust to collect this debt from the grievor or from the other CF members who were given incorrect pay rates upon CT. The Board recommended that the CDS direct that department authorities prepare a submission to be forwarded to TB recommending remission of the grievor's debt and that all other CF members similarly situated to this grievor should likewise have their cases put forward. The Board further recommended that recovery be ceased until a decision is made by the GIC.
113.	2011-094	Separation Expense Recovery of Overpayment/ Debt Write-off	Partial Grant	The Board found that it was a very large debt to repay for anyone in the CF, that there was no evidence the grievor acted in bad faith, that he had been forthcoming to his superiors about his situation and, that he had not been enriched by the SE benefits received. Instead, that money was used to pay room and board while he was separated from his family. The Board recommended that the CDS direct that department authorities prepare a submission to be forwarded to TB recommending remission of the grievor's debt and that all other CF members similarly situated to this grievor should likewise have their cases put forward. The Board further recommended that recovery be ceased until a decision is made by the GIC.
114.	2011-095	Harassment Situational Assessment	Denial	The Board was of the opinion that if the grievor's allegations, as written, were proven to be true, they would amount to harassment. However, based on the additional information obtained during its review of the grievance, the Board found that the author of the measures the grievor objected to was legitimately exercising his supervisory function and his decision was reasonable. Consequently, the Board concluded that a harassment investigation is neither necessary nor appropriate.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
115.	2011-096	Leave Entitlement	Denial	The Board found that replacing short leave with special leave would not affect the grievor's retirement date.
116.	2011-097	Counselling and Probation	Partial Grant	The Board concluded that the grievor was not sent a Notice of Intent to issue a C&P nor was he given a reasonable timeframe to submit representations, two procedures that, pursuant to the DAOD 5019-4, Corrective Measures, must be observed when issuing a C&P. The Board therefore concluded that the C&P should be cancelled. The Board recommended that the CDS order that an IC be issued in place of the C&P for breaching a standard of conduct.
117.	2011-098	Allowance – Loss of Operational Allowances Repatriation	Grant	The Board concluded that the grievor's burns resulted from his military service since it was well known that CF members on teams were required to cook their own meals on a regular basis and that this chore was an integral part of their task load. The Board concluded that the grievor was not negligent given that he had simply copied the actions of the section CO and obeyed his orders. The grievor was therefore entitled to the ALOA.
118.	2011-099	Release – Medical Medical Employment Limitation	Denial	The Board found that the grievor was treated in accordance with the relevant policy and the decision to release him on medical grounds was reasonable.
119.	2011-100	Custodial Services Expenses	Denial	The Board found that the grievor was not entitled to reimbursement of his expenses related to custodial services because he had not contracted the services from a commercial firm as required by regulations.
120.	2011-101	Integrated Relocation Program Interim Lodging, Meals and Incidentals	Denial	The Board noted that the CF IRP imposes an obligation on CF members to ensure a door-to-door move in order to keep ILM&M expenses to a minimum; consequently, the Board concluded that the additional ILM&M expenses were appropriately reimbursed from the personalized funds.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
121.	2011-102	Integrated Relocation Program Interim Lodging, Meals and Incidentals Mortgage Default Insurance	Denial	The Board noted that while the provisions of the CF IRP allowed for reimbursement of additional ILM&M if a door-to-door move had been unsuccessful due to circumstances beyond the member's control, CANFORGEN 130/09 appeared to apply a different standard, allowing for reimbursement if the CF member could demonstrate that they made "every reasonable effort" to arrange a door-to-door move. The Board found that the correct standard to be applied was pursuant to the CF IRP and that this standard was applied too restrictively. Further, the Board found that although the grievor made "every reasonable effort" to arrange a door-to-door move, the Board was unable to conclude that he met the more restrictive test in the CF IRP. Therefore, the Board found that the grievor was not entitled to additional ILM&M from the core envelope.
122.	2011-103	Promotion Personnel Evaluation Report	Denial	The Board noted that, in light of the realities of part-time service in the P Res, it is not unusual for Class A Reservists to be employed in over-ranked positions and that such employment did not necessarily require or justify promotion. The Board concluded that it would not be an appropriate use of the CDS discretion to over-rule the judgment of the grievor's CO by directing the grievor's promotion.
123.	2011-104	Personnel Evaluation Report	Partial Grant	The Board concluded that the grievor's AF and PF were inadequate and should be increased. Given the major changes to his PER, the Board recommended that the CDS order a review of the grievor's case to determine whether an additional Selection Board was required.
124.	2011-105	Personnel Evaluation Report	Denial	The Board concluded that the grievor had not provided concrete evidence in order for scores to be increased on a PER. On the issue of PDR, the Board acknowledged that the grievor only received one PDR throughout the reporting period; however, in the Board's opinion this did not nullify the PER.
125.	2011-106	Prior Learning Assessment Review Time Credit for Promotion	Denial	The Board found that the grievor's civilian qualifications and skills were given appropriate credit in the PLAR process and were appropriately recognized and credited towards promotion (TCP) and pay rate (IC).

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
126.	2011-107	Personnel Evaluation Report	Denial	The Board found that the grievor was provided with sufficient feedback throughout the year in order to assess and correct his shortcomings. The Board added that the absence of a PDR, in itself, did not justify a modification to the ratings in the PER.
127.	2011-108	Release – Conduct/ Performance	Grant	The Board noted that it is possible for a CF member to be placed on C&P more than once for the same deficiency. In the grievor's case, he was placed on C&P twice for having failed to meet the MPFS. The Board found that the grievor, while unsuccessful in his first attempt at the CF EXPRES Test midway through his period of C&P, did meet the MPFS prior to the end of the monitoring period and successfully completed his C&P. The Board recommended that the grievor's records be amended to show that he was released in error.
128.	2011-109	Procedural fairness Release – Compulsory Release – Conduct/ Performance	Partial Grant	The Board found no evidence to suggest that the grievor did not understand the nature and quality of his act at the time of the commission of the offence. Given that the grievor was convicted of a serious offence by a civilian court, the Board found that the item of release assigned to the grievor was reasonable and found no justification warranting that it be modified.
129.	2011-111	Separation Expense Recovery of Overpayment/ Debt Write-off	Grant	The Board found that the grievor's mother qualified as a dependant. Moreover, the Board found that, definitions aside, evidence on the file makes clear the parents were "normally" residing with the grievor having done so for many years and that they were, in fact, dependant on him for shelter, food, and other necessities of life. Thus, the Board found that the grievor was qualified for the SE benefits during the period of his posting. The Board recommended that the CDS uphold the grievance by directing that any further recovery from this grievor be ceased immediately and that all monies recovered be reimbursed to the grievor.

	CFGB File No.	Matter(s) Grieved	Outcome	Summary of CFGB's F&R
130.	2011-112	Administrative Action Procedural fairness	Grant	The Board pointed out that the common law duty of procedural fairness generally requires that before an administrative authority makes a decision affecting a person's interests, that person should be informed of the case and given the opportunity to respond. The Board stated that the reassignment of the grievor could not be considered a career management decision and concluded that the posting was used as an administrative sanction or penalty. The Board recommended that the CDS acknowledge the hastiness and unreasonableness of the grievor's reassignment and that he acknowledge that the manner in which the grievor was treated was inappropriate. The Board also recommended that the grievor be returned, as soon as administratively possible, to an operational focused position, commensurate with his rank and experience.
131.	2011-113	Relocation Benefits Legal Fees	Denial	The Board found that neither the sale of the grievor's residence, nor the timing of the family's move from the residence, was directly connected to his posting.
132.	2011-114	Separation Expense Recovery of Overpayment/ Debt Write-off	Grant	The Board found that while the grievor had ceased maintaining the expenses of a principal residence at his former place of duty and had moved his spouse to reside with her parents, he was still entitled to receive the SE benefit for the period after he sold his house until his subsequent posting.
133.	2011-121	Integrated Relocation Program Mortgage Loan Insurance premium	Grant	Article 8.1.03 of the CF IRP provides that CF members can claim benefits such as the MLI if the closing date of the residence sold or purchased is no more than one year before or two years after the COS date. The Board found that this provision on time limit was inconsistent with the restrictive English version of article 8.3.10. The Board recommended that the CDS direct that the grievor be reimbursed the full amount of the MLI expenses he incurred. The Board also issued a systemic recommendation that the French and English versions of article 8.3.10 of the CF IRP be reconciled, and that the intent of the English version be reconsidered and clarified.
134.	2011-125	Posting Allowance Transfer from Reserve Force to Regular Force	Grant	The Board found that the grievor was in fact employed and performing a duty while posted to Gagetown, his first place of duty. The Board also found that the grievor's subsequent posting to Trenton represented his second place of duty where he would be employed after having transferred to the Reg F. The Board concluded that the grievor was entitled to the PA for his relocation from Gagetown to Trenton.

ADM Assistant Deputy Minister

ADM (HR-Mil) Assistant Deputy Minister (Human Resources – Military)

ADM (Per) Assistant Deputy Minister (Personnel)

AF Assessment Factors

ALOA Allowance – Loss of Operational Allowances

AR Administrative Review

AWSE Acting While So Employed

C&P Counselling and Probation

CANAIRGEN Canadian Air Force General Order

CANFORGEN Canadian Forces General message

CBI Compensation and Benefits Instructions

CDS Chief of the Defence Staff

CE Continuing Engagement

CF Canadian Forces

CF H Svcs Canadian Forces Health Services

CF IRP Integrated Relocation Program

CFAO Canadian Forces Administrative Orders

CFPAS Canadian Forces Personnel Appraisal System

CFSA Canadian Forces Superannuation Act

CO Commanding Officer

COS Change of Strength

COT Compulsory Occupational Transfer

CT Component Transfer

DAOD Defence Administrative Orders and Directives

DCBA Director Compensation and Benefits Administration

DCCL Director Claims and Civil Litigation

DGCB Director General Compensation and Benefits

DGCFGA Director General Canadian Forces Grievance Authority

DIVGA Diving Allowance

DMCARM Director Military Career Administration and Resource Management

DND Department of National Defence

DPM PS Deputy Provost Marshal Professional Services

EOD Explosive Ordnance Disposal

EPZ Enter promotion zone

EXPRES EXercise PREScription

GIC Governor in Council

HEA Home Equity Assistance

HG&E Household Goods and Effects

IA Initial Authority

IC Initial Counselling

ICSI Intra cytoplasmic sperm injection

ILM&I	Interim Lodging, Meals and Incidentals
ILQ	Intermediate Leadership Qualification
IPC	Incentive Pay Category
IPR	Intended Place of Residence
IR	Imposed Restrictions
IVF	In Vitro Fertilization
MATA-PATA	Maternity and Parental Allowance
MDI	Mortgage Default Insurance
MEL	Medical Employment Limitation
MLI	Mortgage Loan Insurance
MND	Minister of National Defence
MOC	Military occupation
MOSID	Military Occupational Structure Identification Specific Training
MPFS	Minimum Physical Fitness Standard
NCR	National Capital Region
NDA	National Defence Act
NDHQ	National Defence Headquarters
OS	Obligatory Service
P Res	Primary Reserve
PA	Posting Allowance
PDR	Personnel Development Review
PER	Personnel Evaluation Report
PF	Potential Factors
PLAR	Prior Learning Assessment Review
PRB	Progress Review Board
Reg F	Regular Force
Res F	Reserve Force
Res Svc	Reserve Service
RMC	Royal Military College
RTU	Return to Unit
RW	Recorded Warning
SCA	Special Commuting Assistance
SCP	Special Commissioning Plan
SDA	Special Duty Area
SE	Separation Expense
Supp Res	Supplementary Reserve
TB	Treasury Board
TBS	Treasury Board Secretariat
TCP	Time Credit for Promotion
TDRA	Temporary Dual Residence Assistance
TOS	Terms of Service
TPLD	Transitional Post Living Differential
U of S	Universality of Service
UTPNCM	University Training Plan – Non-Commissioned Members

RECOMMENDATIONS TO JUSTICE LESAGE

In August 2011, the Board submitted the following ten recommendations to the Honourable Patrick LeSage who was appointed by the Minister of National Defence to conduct the Second Independent Review of Bill C-25. The full CFGB's submission to Justice LeSage is available on the Board's Web site: **www.cfgb-cgfc.gc.ca**.

The right to grieve:

- The Board recommended that paragraph 29(2)c) of the *National Defence Act* (NDA) and the *Queens Regulations and Orders* for 7.01(1) be amended to reflect that "a matter or case excluded[1] by the Governor in Council in regulations" cannot be grieved to prevent any misinterpretation.

The Final Authority:

- The Board recommended the amendment of section 29.11 of the NDA to authorize an entity, outside the CF chain of command, to act as Final Authority in those limited and exceptional cases where an act, decision or omission of the CDS is at issue.
- The Board recommended that the statutory authority of the CDS as Final Authority be amended in such a way so as to ensure that he/she has an appropriate financial delegation. This will enable him/her to make a decision on financial compensation where this form of relief is sought as redress.

Equal access to an external review for all grievances at the Final Authority level:

- The Board recommended that the statute be amended to reflect that all unresolved grievance files must be referred to the Board prior to the decision of the Final Authority.

1 NDA paragraph 29(2)c) stipulates: "there is no right to grieve in respect of... a matter or case prescribed by the Governor in Council (GIC) in regulations." This led Initial Authorities to dismiss grievances. The Board repeatedly issued F&R explaining that NDA 29(2)c) does not prevent CF members from submitting grievances concerning matters governed by regulations made by the GIC. Rather, it enables the GIC to make regulations excluding specific matters or cases from the grievance process.

Delegation of the Final Authority's powers, duties and functions:

- The Board recommended that the statute be amended to reflect that the officer(s), to whom the powers, duties and functions as Final Authority are delegated, be one rank above the rank of the officer whose decision is being grieved.
- The Board recommended that the statute be amended to reflect that the delegate acting as Final Authority should not be the same officer as the administrator of the grievance process for the CDS.

Board members:

- The Board recommended that section 29.16[2] of the NDA be amended by striking paragraph 10 in its entirety.
- The Board recommended the amendment of subsection 29.16(4) of the NDA by including a transitional measure that would enable Board members who are not re-appointed to complete the cases that are assigned to them.

Subpoena power:

- The Board recommended that section 29.21 of the NDA be amended to allow the Board to require, by way of *subpoena duces tecum*, the production of documents or things without the requirement to hold a hearing.

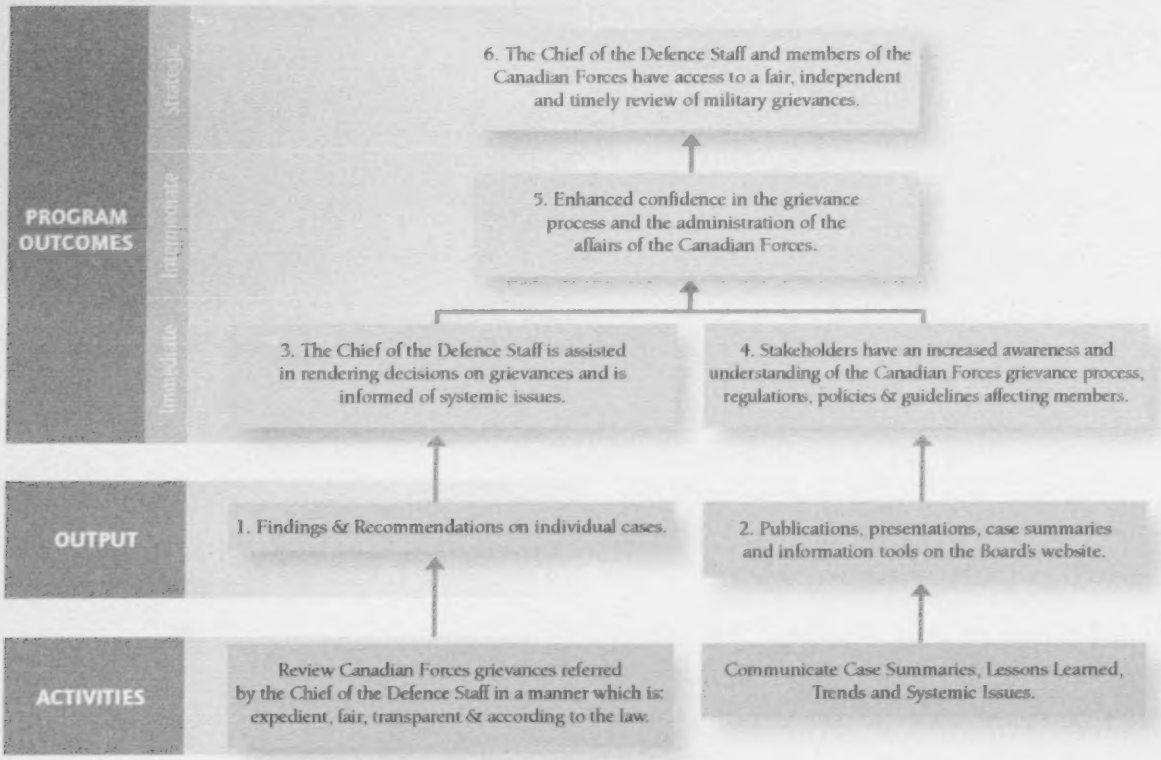
Annual Report:

- The Board recommended that subsection 29.28(1) of the NDA be amended so that the date on which the annual report is tabled correlates to the activities completed during the fiscal year rather than the calendar year.

2 Subsection 29.16(10) provides for an officer or non-commissioned member of the CF to be appointed a member of the Board. Although this has not happened to date, the Board's position is that it would not be advisable given the Board's role as an external agency.

ANNEXES

LOGIC MODEL


PROGRAM OUTCOMES
Strategic
Intermediate
Immediate
6. The Chief of the Defence Staff and members of the Canadian Forces have access to a fair, independent and timely review of military grievances.
5. Enhanced confidence in the grievance process and the administration of the affairs of the Canadian Forces.
3. The Chief of the Defence Staff is assisted in rendering decisions on grievances and is informed of systemic issues.
4. Stakeholders have an increased awareness and understanding of the Canadian Forces grievance process, regulations, policies & guidelines affecting members.
OUTPUT
1. Findings & Recommendations on individual cases.
2. Publications, presentations, case summaries and information tools on the Board's website.
ACTIVITIES
Review Canadian Forces grievances referred by the Chief of the Defence Staff in a manner which is: expedient, fair, transparent & according to the law.
Communicate Case Summaries, Lessons Learned, Trends and Systemic Issues.

FINANCIAL TABLE

Planned Spending 2011-12 (In dollars)

Salaries, wages and other personnel costs	3,822,157
Contribution to employee benefit plans	623,000
Subtotal	**4,445,157**
Other operating expenditures	1,630,000
Total planned expenditures	6,075,157

December 31, 2011. Actual expenditures will vary from the planned spending.

BOARD MEMBERS AND STAFF

CHAIRPERSON

Bruno Hamel

Mr. Hamel was appointed Chairperson of the Board on March 2, 2009. A retired Canadian Forces officer, he has a lengthy and varied experience in military complaint resolution after many years spent as a senior grievance analyst and, later, as Director Special Grievances Enquiries & Investigations within the Director General Canadian Forces Grievance Authority. He has also served as Director General of Operations in the Office of the Ombudsman for the Department of National Defence and the Canadian Forces.

FULL-TIME VICE-CHAIRPERSON

James Price

Mr. Price brings to his position extensive experience as a Canadian Forces officer in all areas of military law, including the military justice system, administrative law, international law and operational law. After serving as Assistant Judge Advocate General for Europe, he was appointed military judge, presiding over cases involving both service offences and offences under the Criminal Code of Canada.

PART-TIME VICE-CHAIRPERSON

Denis Brazeau

Mr. Brazeau retired from the Canadian Forces after 30 years of service, which included many deployments abroad and a posting as Chief of Staff of the Secteur du Québec de la Force terrestre. He was appointed an Officer of the Order of Military Merit by the Governor General in 2004.

With diverse backgrounds and a broad range of professional experience, the Board's employees work together to fulfill its mandate and achieve its vision.

PART-TIME MEMBER

Michael Auger

A retired artillery officer, Mr. Auger headed the Military Occupation Structure Review and served as Executive Assistant to the Assistant Deputy Minister of Human Resources – Military. He currently mentors junior officers at the Canadian Forces Land Staff College.

PART-TIME MEMBER

Carina Anne De Pellegrin

Ms. De Pellegrin is a legal professional, former Canadian Forces aeronautical engineering officer and a graduate of the Royal Military College. She has also advised on human rights complaints before the Canadian and Ontario Human Rights Commissions.

PART-TIME MEMBER

Frederick Blair

A retired senior military lawyer, Mr. Blair was called to the Bar of Ontario in 1970. He later served in various positions within the office of the Judge Advocate General and deployed in Europe as Senior Legal Adviser.

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